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SCHOOL LAW LECTURES—PARTS I. & II.

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# THE PUBLIC SCHOOL LAW

OF ONTARIO :

OFFICIAL REGULATIONS

AND

DECISIONS OF THE SUPERIOR COURTS,

RELATING TO

SCHOOL TRUSTEE CORPORATIONS; MUNICIPAL COUNCILS;  
SCHOOL BOUNDARIES; ARBITRATIONS AND AWARDS;  
PUBLIC SCHOOL INSPECTORS; BOARDS OF EXAMINERS;  
CHIEF SUPERINTENDENT AND COUNCIL OF PUBLIC INSTRUCTION;

ALSO, THE ACTS RELATING TO

ROMAN CATHOLIC, PROTESTANT, AND COLOURED, SEPARATE SCHOOLS.

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WITH A COPIOUS INDEX.

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BEING THE SUBSTANCE OF LECTURES TO NORMAL SCHOOL STUDENTS

BY

J. GEORGE HODGINS, LL.D., *Barrister-at-Law,*

*Deputy Superintendent of Education for Ontario.*

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TORONTO :

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SCHOOL LAW LECTURES—PART I.

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THE  
LAW AND OFFICIAL REGULATIONS

RELATING TO

PUBLIC SCHOOL TRUSTEES

IN

RURAL SECTIONS,

AND TO

PUBLIC SCHOOL TEACHERS

(INCLUDING DECISIONS OF THE SUPERIOR COURTS THEREON);

AS PRESCRIBED FOR

SECOND AND THIRD CLASS

PROVINCIAL AND COUNTY CERTIFICATES

OF QUALIFICATION.

---

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1872.

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one thousand eight hundred and seventy-two, by JOHN GEORGE  
HODGINS, LL.D., Barrister-at-Law, in the Office of the Minister  
of Agriculture.

## PREFATORY NOTE.

The great difficulty which trustees, teachers and others connected with the public schools experience in understanding the precise meaning of the technical and formal words of the Statute Law, has induced me to prepare in this popular form the various provisions of the School Law. The work itself is a reproduction in a connected form of a course of lectures, which I have for some time gratuitously delivered, with more or less variation, to the students of the Normal School. My object has been to give, as far as possible, in familiar language, the substance and pith of the School Law and Regulations, together with the decisions of the superior courts on various points. I have very rarely given the *ipsissima verba* of the Statutes, since they are, as a general rule, so purely technical and formal, that without explanation they are not so easy to understand.

Our Public School Acts and Regulations, &c., may now, in their present form, be regarded in the light of a school code. This code embraces the following statutes, regulations and decisions :

1. The original School Law of 1850, (embodying, with additions, the main features of the School Laws of 1841, 1846 and 1847).
2. The School Law Amendment Act of 1860.
3. The School Law Improvement Act of 1871.
4. The Official (Recommendatory) Regulations of 1871.
5. The School Law Decisions of the Superior Courts.
6. The Official Decisions of the Education Department.

I have endeavored in this portion of my lectures to give the substance of the three School Acts, so far as they relate to the powers and duties of public school trustees,—including the law relating to public school meetings and trustee elections, as well as the law and regulations affecting public school teachers,—their qualifications and duties.

One of the qualifications now very properly required of each candidate for a certificate as a Public School Teacher, is a knowledge of certain portions of the School Law, etc. With a view to aid those who attend the Normal School to obtain this information, the Council of Public Instruction appointed me in 1866 to deliver a course of lectures on the sub-



ject each session to the students of that institution. The small salary attached to the lectureship was discontinued by the Government in 1868, but I have, nevertheless, continued to deliver these lectures gratuitously to the students. It has occurred to me, however, that as many candidates for certificates do not attend the Normal School, they would be placed at a great disadvantage in competing for certificates with Normal School students, unless they could obtain the same information as these students on a subject so technical in many of its features as the School Law. I have, therefore, proposed to supply this information in this form.

I intend shortly to issue in the same form lectures on the remaining portions of the School Law and Regulations relating to municipal councils, city and town boards of trustees, inspectors, etc., as prescribed for teachers' first-class certificates.

J. G. H.

TORONTO, February, 1872.



## PRELIMINARY REMARKS

### REGARD TO THE OFFICE OF TRUSTEE.

**NOTE.**—There are certain equitable principles which apply to the trustees and their office, (some of which do not arise under the School Law,) to which it is proper to refer in this introductory part of my lectures as follows:—

1. *A trustee defined.*—A trustee may be regarded as a person to whom money, or other property or valuables, is entrusted to expend or manage, under certain rules or directions, for the use or benefit of another party.

2. *What a trustee is expected to do.*—In the discharge of his duties, a trustee is required to use the customary care and diligence usually exercised by a man of ordinary prudence and vigilance in the management of his own affairs.

3. *Responsibilities of a trustee.*—A trustee is responsible:

(A.)—For his own acts, and for the acts of his colleagues done with his knowledge.

(B.)—For all breaches of trust or defaults committed by himself, or by his colleagues, to which he is privy, or in which he expressly, or tacitly acquiesces, or which would not have happened but for his own negligence, act or default.

(C.)—(Under the School Law) a trustee is personally responsible for neglect of duty, refusal to act, when lawfully required to do so, or for loss of money, through his wilful act, negligence or carelessness.

4. *What a trustee can do.*—He may, with the consent of his colleagues:

(A.)—Defray out of the trust fund expenses legitimately and properly incurred. (See Decisions of the Courts, page 15—(10) on page 32.)

(B.)—(Under the School Law)—Receive remuneration as collector of school rates.

(C.)—(Under the School Law)—Receive payment for a school site.

5. *What a trustee cannot do.*—Unless modified by Statute, or other authoritative direction, a trustee cannot lawfully:

(A.)—Receive, even with the consent of his colleagues, any salary or remuneration for his services.

(B.)—Make any personal profit out of the trust.

(C.)—Mix up trust money or accounts with his own.

(D.)—(Under the School Law)—Enter into a contract with, or have a pecuniary claim (except in two instances; see above) on the corporation of which he is a member.

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### PREFATORY NOTE.

#### PRELIMINARY REMARKS IN REGARD TO THE OFFICE OF TRUSTEE.

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2. What a Trustee is expected to do.
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4. What a Trustee cannot do.
5. What a Trustee can do.
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#### THE OFFICE OF TRUSTEE.

1. Who may be a Public School Trustee.
2. Who may not be a Trustee.
3. How the Office of Trustee may be vacated.
4. Declaration of office.
5. Term of office.
6. Trustees in altered sections.
7. Power of retiring Trustee.
8. Personal liability of Trustees.
9. Decisions of the Superior Courts on the subject.

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8. When Trustees may sell School site or other property.
9. What constitutes "adequate School accommodation"—General directions to Trustees.
10. Erection of a School-house, Teacher's residence, &c.
11. Use of School-house.
12. Duty of Trustees in regard to care and repair of School-house.
13. Decisions of the Superior Courts in regard to School sites.
14. Right of Trustees in regard to Teacher, apparatus, books, &c.
15. Who shall determine the expenses of the School.
16. Free Public School Library.
17. Who have a right to attend School.
18. Authorized text-books to be used.
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20. Second, or Female School.
21. Duty of Trustees and Teacher to report.
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# SCHOOL LAW

## RELATING TO TRUSTEES IN RURAL SECTIONS.

### CHAPTER I.

#### THE OFFICE OF TRUSTEE.

##### **Section 1.—Who may be a Public School Trustee.**

Any assessed freeholder, or householder, resident in a public school section, may be elected a trustee of such section.

##### **2.—Who may not be a Public School Trustee.**

The law excludes the following persons from the office of school trustee:—

- (A.) A non-resident.
- (B.) A resident who is not an assessed ratepayer.
- (C.) An inspector of public schools.
- (D.) A teacher in a high or public school.

##### **3.—The Office of School Trustee may be Vacated as follows:**

(A.) *By refusal to act*, and payment of five dollars, as a penalty for such refusal, immediately after election to office.

(B.) *By resignation*, with the consent, in writing, of his colleagues, and of the inspector of public schools.

(C.) *Neglect to make Verbal Declaration*.—On being fined twenty dollars by a magistrate for neglect, or refusal to make a verbal declaration of office before the chairman of the school meeting, within two weeks after election.

NOTE.—The declaration of office, if made at any time before being summoned before a magistrate, may be held to rebut the "evidence of refusal to serve" as trustee. (For powers of trustee-elect, before being fined for not making the declaration of office, see chapter on "Public School Meetings.")

(D.) *Neglect of Duty*.—On being fined twenty dollars for neglecting or refusing to perform the duties of his office—not having, on



his election (as in *A*, above), refused to accept office, and paid the prescribed penalty of *five* dollars for such refusal.

(*E.*) *Removal.*—By actual removal from the section.

(*F.*) *Non-Residence.*—By six months' continuous non-residence.

**NOTE.**—The distinction between these two latter cases is this—that in the one case the office is vacated immediately on the removal of the trustee's residence or domicile from the section: in the other, the individual trustee must be absent six months consecutively from the section (while his residence or domicile still remains in it) before his office is vacated.

(*G.*) *Outside the Boundaries.*—On being placed outside the section boundaries by reason of their alteration. (See section 6, below.)

#### **4.—Verbal Declaration of Office required to be made.**

Within two weeks after his election, the new trustee is required to make the following verbal declaration of office, in presence of the chairman of the school meeting:—

"I will truly and faithfully, to the best of my judgment and ability, discharge the duties of the office of school trustee, to which I have been elected."

**NOTE.**—If the chairman himself be elected trustee, he is required to make the foregoing declaration of office in presence of the secretary of the school meeting. In case of neglect or refusal to do so—in either case—the trustee elect subjects himself to a fine of *twenty* dollars, to be recovered before a magistrate, for the benefit of the section. Immediately on the imposition of this fine the office is vacated, and a new election should be held, but, in the meantime, the *bona fide* acts of the trustee (if he should perform any) are binding upon the section. (See note to (*C.*) of section 3, and note to section 6.)

#### **5.—Trustee's Three Years' Term of Office.**

Each trustee holds office for three years, and until his successor is elected. This rule does not apply to the second and third trustees elected at a first school meeting in a section. One of these trustees (the second elected) holds office for two years, and the other (the third elected) for one year, and, in all cases, until their successors are elected.

**NOTE.**—After serving his full term, a trustee cannot be compelled to act as trustee until after the expiration of four years; but he may, with his consent, be re-elected. This privilege does not extend to a person who declines to act as trustee, and pays the fine of *five* dollars for non-service. Such a person may be elected to fill the next succeeding vacancy, but may again decline to serve, on payment of *five* dollars, as before.

#### **6.—Who are the Trustees of altered School Sections.**

That part of a divided or altered section, in which the school-house of the section continues to be situated, is held to be the old or original section. The trustees who live in this part remain the lawful trustees of the section, and only go out of office on the expiration of their term of service. Those only who, by the alteration, are placed outside of the new boundaries, cease to be trustees when the alteration takes effect. (As to a new election, see "Note.")

Thus, the Court of Common Pleas has decided that alterations in the boundaries of a school section, or the change of many of the rate-payers originally taken, did not relieve the trustees of the responsibility of paying a just debt due by the original section before any alteration was made. (See decision (4), section 13, of chapter II.)

NOTE.—As a general rule, it is scarcely worth while to anticipate the annual meeting, and elect a trustee or trustees in place of the one (or two) who may cease to hold office on the 25th December, by reason of non-residence, caused by being placed outside the new boundaries, as explained above. The remaining trustee or trustees (as well as the secretary or inspector) can give notice of the annual school meeting. Should, however, an election be held before the annual meeting, another election must be held on the second Wednesday in January, to fill up the usual vacancy caused by the retiring trustee.

#### 7.—Power of the Retiring Trustee at the Close of his Term.

The restriction on the power of the "retiring trustee," at the close of his term of office, having been removed by the School Act of 1871, he has now equal power and authority with either of his colleagues, up to the day of his leaving office.

#### 8.—Personal Liability of Trustees—How it arises.

The personal responsibility of trustees arises in various ways, (under the School Acts and Regulations), among others, as follows:—

(A.) For neglect to keep open a school during the whole school year, and the consequent loss of any part of the school fund to the section.

(B.) For loss, in consequence of neglect to take security from their secretary-treasurer, or collector.

(C.) Neglect to transact trustee business, or authorize contracts, at trustee meetings, properly called.

NOTE.—Trustees are, of course, free to converse at pleasure with each other, and informally to agree on any school business; but the law declares that "No act or proceeding of a school corporation shall be deemed valid or binding on any party, which is not adopted at a regular or special meeting [of the Corporation] of which notice shall be given [personally or in writing] to all the trustees by the secretary, or by one of the trustees." Thus, if a verbal contract or agreement is made by two Trustees, with other parties acting in good faith, without the knowledge of the other trustee, such agreement or understanding would not bind the corporation, but only the individual trustees who entered into it. It is also doubtful whether such an agreement or understanding could be enforced under the statute against the third party, although it might be enforced against the trustees who made it in violation of the express provisions of the Act. It is, of course, a question whether a contract signed by two trustees, and sealed with the corporate seal, could not be enforced against the corporation; at all events, it is presumed that it could be enforced against the individual trustees who knowingly entered into it without the knowledge of their colleague. This rule does not apply to minor purchases, or unimportant orders for work required to be done for the corporation, and involving a small outlay. In such cases trustees should authorize one of themselves, or their secretary, to attend to such matters on their behalf. No trustee (as we have shown) can enter into a contract with the corporation of which he is a member, or have any pecuniary claim on it, except for a school site, or as collector of school-rates, when duly appointed by his colleagues. No act of the school corporation requires the assent, or, necessarily, the presence, of each indi-

vidual trustee. It is enough that the three trustees have been individually notified of the trustee-meeting, and that a majority of the three trustees thus notified concurs in the act itself. The following decisions of the Superior Courts sustain this view:—

(1.) *Two School Trustees can enter into a Contract against the wishes of a third.*—The Court of Common Pleas has decided that a contract entered into by two trustees under the School Acts, with the corporate seal attached, is sufficient; and a plea that it was signed by the two subscribing trustees without the consent or approbation of the third, was held to be bad.—*Forbes v. Trustees No. 8, Plympton*. 8 C. P. R. 877.

(2.) *But two Trustees cannot act without consulting a third.*—The Court of Queen's Bench has decided that two of the Trustees of a school are not competent to act in all cases without consulting a third, and giving him an opportunity of uniting in or opposing the acts of his colleagues.—*Orr v. Ranney et al. No. 15, Westminster*. 12 Q. B. R. 377. (See decisions in section 13, chapter II.)

(D.) *For wilful neglect or refusal "to exercise all the corporate powers vested in them for the fulfilment of any contract or agreement made by them."* (See next section, 9.)

(E.) *Declaration of Office—Duty.*—For refusal or neglect to make the declaration of office, or to perform their lawful duties after having accepted office, a fine of twenty dollars may be enforced by a magistrate. (See section 4 of this chapter.)

(F.) *Notes of Hand.*—For all notes of hand, even for a lawful purpose, which they may sign.

NOTE.—The signature of two or more trustees to notes of hand, and even the affixing to them of the corporate seal, do not necessarily relieve individual trustees of personal responsibility in regard to them, or give to such notes a corporate character. (See section 3, chapter II.) The School Law does not authorize or require trustees to give promissory notes of hand. It is silent on the subject; but it gives them ample powers at all times to procure by rate, imposed by themselves, or by the township council; such money as they may require. It is, therefore, no part of their duty as trustees to give promissory notes. If they do so, the individual members of the corporation who sign them are *prima facie* personally responsible for their payment, and they cannot bind the corporation by such note of hand, even should they affix to it their corporate seal. Trustees who require to borrow money for school purposes can only do so with the consent of the ratepayers, and by permission of the municipal council; and the council is alone authorized to provide for the repayment of such borrowed money. The only apparent exception to this general rule is contained in the 276th section of the Municipal Institutions Act. This section authorizes the trustees, with the consent of the ratepayers of their section, as "obtained at a special meeting," to borrow from a municipal council surplus clergy reserve money for the sole purpose of paying for a school-site, or for erecting a school-house. The authority of the ratepayers to borrow the money, as well as the terms agreed upon, and rate of interest, must be embodied in a by-law of the trustee corporation, but the law says nothing of notes of hand or debentures—simply a "by-law." (See decision 8 of the Courts, section 5, chapter III.)

(G.) *Unqualified Teachers.*—For the salary of teachers, or assistants, (employed by them), who do not possess legal certificates of qualification during the whole period of their engagement. (See chapter IX.)

(H.) *Refusal to account.*—For their own refusal, or that of their secretary (on their behalf) to furnish either of the school section

auditors with the papers or information in their possession, or within their jurisdiction, relative to their school accounts. (See chapter V.)

(I.) *Account for Moneys.*—For neglect, or refusal, to account to competent authority for school moneys or other school property entrusted to them, or in their possession. (See chapter V.)

(J.) *Neglect of Regulations.*—For loss to the section of any portion of the Legislative grant (or county assessment), in consequence of their refusal to conduct their school according to the lawful official regulations (which have the force of law).

(K.) *Further Penalties for Neglect of Duty:*—

- (1.) *Twenty* dollars for making a false return to the Inspector.
- (2.) *Five* dollars for every week of delay in forwarding their annual report to the Inspector.
- (3.) *Five* dollars for neglect in not calling annual or other necessary school meetings.

#### 9.—Decisions of the Superior Courts as to the Personal Liability of Trustees.

(1.) *Personal Liability on neglect or refusal to exercise their Corporate powers.*—The Court of Queen's Bench has decided as follows, in a case where a mandamus *nisi* having been issued to school trustees to levy the amount of a judgment obtained against them, no return was made, and a rule *nisi* for an attachment issued. In answer to this rule, one trustee swore that he always had been and still was desirous to obey the writ, and had repeatedly asked the others to join him in levying the rate, but that they had refused. Another swore that owing to ill-health, with the consent of his co-trustees and the local superintendent, he had resigned his office before the writ was granted. The court, under these circumstances, discharged the rule *nisi* as against these two, on payment of costs of the application, and granted an attachment against the other trustee, who had taken no notice either of the mandamus or rule.—*Regina v. Trustees of School Section No. 17, Tyendinaga*. 20 Q. B. R. 528.

(2) The Court of Queen's Bench has decided, that, as by the [twentieth] clause of the [twenty-seventh] section of the Consolidated School Act, the trustees can only be personally liable when they have wilfully neglected or refused to exercise their corporate powers; such neglect or refusal should have been alleged and shown in the award, to warrant its directions to levy on the trustees personally.—*Kennedy v. Burness et al., No. 5, Onida*. 15 Q. B. R. 473.

(3) *Neglect of Trustees to exercise their Corporate Powers must be proved.*—The Court of Common Pleas also decided another similar case as follows:—In an action of replevin for goods of school trustees distrained under an award for the salary of a school teacher, declaring the trustees individually liable on the ground "that the trustees did not exercise all the corporate powers vested in them by the School Acts for the due fulfilment of the contract" made by them with such teacher. *Held*, that the award as evidence did not support pleas which averred as required by the [twentieth] clause of the [twenty-seventh] section of the Consolidated School Act, a wilful neglect or refusal by the trustees to exercise their corporate powers as the ground for making them personally liable. 2. That, on the facts, the defendants as trustees were not personally liable, the award ascertaining for the first time the exact amount due to the teacher, and declaring the trustees personally liable without giving them any opportunity to exercise their corporate powers to raise the money to pay it.—*Kennedy v. Hall et al., No. 5, Onida*. 7 C. P. R. 218.

NOTE.—An award for a teacher's salary cannot now be made. All salary disputes with teachers must be settled in the Division Courts.

(4.) The same Court has decided that where trustees become personally liable under the statute, it is necessary to show that there has been some adjudication of the fact of wilful neglect or refusal to exercise the corporate powers vested in them for the fulfilment of any contract or agreement made by them, before such liability can be enforced.—*Ranney v. Macklem et al.* C. P. R. 192.

(5.) *When Personal Liability of Trustee arises.*—The Court of Queen's Bench has decided that trustees cannot be held liable unless they wilfully neglect to do their duty; not where they decline in good faith to exercise their corporate powers, on account of any doubt or legal difficulty which they suppose to exist.—*Vanburen v. Bull et al. No. 2, Rawdon.* 19 Q. B. R. 633.

## CHAPTER II.

### POWERS AND DUTIES OF TRUSTEES.

#### I.—GENERAL CORPORATE POWERS.

##### 1.—Rural Trustees to be a School Corporation.

The law declares that "the Trustees in each school section shall be a corporation, under the name of *The Public School Trustees of Section No. —, in the Township of —, in the County of —*. And no such corporation shall cease by reason of want of trustees; but in case of such want [the inspector or] any two assessed freeholders or householders of the section may, by giving six days' notice, \* \* \* call a meeting of the assessed freeholders or householders, who shall proceed to elect three trustees; \* \* \* and the trustees thus elected shall hold, and retire from, office in the manner prescribed, for trustees."

##### 2.—General Powers and Liabilities of a Corporation.

The Consolidated General Interpretation Act further declares that "Words making any association or number of persons a corporation, or body politic and corporate, shall vest in such corporation power to sue and be sued, contract and be contracted with, by their corporate name; to have a common seal,\* and to alter or change the same at pleasure, and to have perpetual succession, and power to acquire and hold personal property and moveables for the purposes for which the corporation is constituted, and to alienate the same at pleasure; and shall also vest in any majority of the members of the corporation, the power to bind the others by their acts; and shall exempt the individual members of the corporation from personal liability for its

\* A corporation being an invisible body, cannot manifest its will by oral communication: a peculiar mode has therefore been devised for the authentic expression of its intention,—namely, the affixing of its common seal; and it is held that though the particular members may express their private consent by words or signing their names, yet this does not bind the corporation: it is the fixing of the seal, and that only, which unites the several assents of the individuals composing it, and makes one joint assent of the whole.—*Smith's Mercantile Law, B. I. Chap. 4.*



debts or obligations or acts, provided they do not contravene the Act incorporating them;—But no corporation shall carry on the business of banking [i.e. taking or issuing promissory notes, &c.], unless when such power is expressly conferred on them by Statute. See "*Decisions of Courts*," next section (1).

### 3.—Decisions of the Superior Courts with regard to School Trustee Corporations.

(1.) *Circulation of School Orders on Treasurer an Act of Banking contrary to Law*.—Chief Justice Draper thus condemns unauthorized acts of banking on the part of corporations. He says: "The evidence given at this trial shows that a practice had grown up for the defendants to give orders on their treasurer, which, when he had accepted them, got into circulation, and at last found their way into the collector's hands, in payment of taxes. Such a practice seems to me at variance with the spirit, if not the intention, of the Consolidated Municipal Act, which enacts that no council shall act as a banker, or issue any bond, bill, note, debenture, or other undertaking of any kind, or in any form of the nature of a bank-bill or note, or intended to form a circulating medium, or to pass as money; and any bond, bill, note, debenture, or other undertaking issued in contravention of this section shall be void.—*In re Munson v. the Municipality of Collingwood*. 9 C. P. R. 497.

(2.) *A Corporation aggregate is not bound to appear as Witnesses in Court, but its Individual Members may be subpoenaed*.—The Court of Common Pleas has decided that a corporation aggregate is not bound to appear at the trial as witnesses, under a notice served on its attorney under the Consolidated Statute 22 Vict., chap. 32, sec. 15. If the individual members are required to appear, they must be individually subpoenaed.—*Trustees No. 2, Dunwich v. McBeath*, 4 C. P. R. 228.

(3.) *Two School Trustees can enter into a Contract against the wishes of a third*.—The Court of Common Pleas has decided that a contract entered into by two trustees under the School Acts, with the corporate seal attached, is sufficient, and a plea that it is signed by the two subscribing trustees, without the consent or approbation of the third [but not without his knowledge,] was held to be bad.—*Forbes v. Trustees, No. 8, Plympton*. 8 C. P. R. 74. (See next decision.)

(4.) *But two Trustees cannot act without consulting a third*.—The Court of Queen's Bench has decided that two of the trustees of a school are not competent to act in all cases without consulting the third, and giving him an opportunity of uniting in or opposing the acts of his colleagues.—*Rainey et al. No. 15 Westminster*. 12 Q. B. R. 377.

(5.) *A Trustee, when sued for a Corporate Act entitled to Notice of Action*.—The Court of Common Pleas has decided, in a case of alleged trespass under a warrant, that a school trustee who is sued for any act done in his corporate capacity, is entitled to notice of action, and that the action must be brought within six months; and that a school trustee, acting in the discharge of his duty as such, is entitled to the protection of, and comes within the Consolidated Statute, 22 Vict., chap. 126, notwithstanding he should have signed a warrant individually, instead of in his corporate capacity.—*Spry v. Munby et al., No. 15, Rawdon*. 11 C. P. R. 285.

(6.) *Protection of Trustees, Collectors, and other lawful School Officers*.—The following are the provisions of the act for the protection of magistrates and others, to which the judge in the foregoing decisions referred.

Sec. 1. Every action brought against any Justice of the Peace for any act done by him in the execution of his duty as such Justice, with respect to any matter within his jurisdiction as said Justice, or against any other officer or person fulfilling any public duty, for anything by him done in the performance of such public duty

[interpreted by the court in the foregoing case (11 C. P. R. 285) to apply to school trustees and to collectors of school rates, when acting under the trustees' lawful warrant] whether any of such duties arise out of the common law or be imposed by Act of Parliament, either Imperial or Provincial, shall be an action on the case as for a tort, and in the declaration it shall be expressly alleged that such act was done maliciously and without reasonable and probable cause; and if at the trial of any such action, upon the general issue pleaded, the plaintiff fails to prove such allegation, he shall be non-suited, or a verdict shall be given for defendant.

Sec 20. So far as applicable, the whole of this Act shall apply for the protection of every officer and person mentioned in the first section hereof, for anything done in the execution of his office, as therein expressed.

NOTE.—The twentieth section of the School Law Amendment Act of 1860, also provides that "Trustees shall not be liable to any prosecution, or the payment of any damages for acting under any bye-law of a municipal Council before it has been quashed."

## II.—POWERS AND DUTIES OF TRUSTEES IN REGARD TO THE SITE AND SCHOOL-HOUSE.

### 4.—Duty of Trustees in regard to the Site of a School-House.

In any school section, should a new school site be deemed desirable, the trustees, or the County Inspector shall call a school meeting to decide the question. Should a difference of opinion arise between a majority of the trustees and the ratepayers on the subject, the matter must be referred to arbitration, as explained in the chapters relating to "School Meetings," and "School Sites," but the trustees alone have the legal right to decide upon the size or enlargement of a school site, as provided in section 7.

### 5.—Trustees to acquire and hold, by any Title, School Property.

Trustees are required by law to "Take possession and have the custody and safe keeping of all public school property which has been acquired or given for public school purposes in such section, and to acquire and hold as a corporation, by any title whatsoever, any land, movable property, moneys, or income for public school purposes, and to apply the same according to the terms on which the same were acquired or received."

### 6.—Necessity for a proper Title to the School-Site.

The provision of the law, and especially the following one, which vests all school property in the trustee corporation for the purposes of sale, requires that trustees should, whenever practicable, obtain a deed, a bond for a deed, a lease, or other legal instrument, granting quiet possession to them of the property in their section, in case they have not sufficient title to it. Objection is frequently made to the right of trustees to assess the section for the repairs or building of the school-house, where no full legal title to the school premises is vested in them. To remove this objection (although it is only a technical one), trustees should obtain the legal instrument referred to, and have it

registered without delay\* Every public school house and site are exempt from taxation, as provided in the Assessment Act.

### 7.—Registration of Trustees' Title to School Premises.

The trustees should not fail to register their title to the school site. In case the owner of a site refuses to sell it to the trustees, and they are compelled to take possession of it under an award of arbitrators (as authorised by the School Act of 1871), they should register the award, if the owner should refuse to give them a title under the award.

NOTE.—Want of registration of title does not deprive the trustees of the right to assess and collect money for any of the school purposes of the section.

### 8.—When Trustees may Sell a School Site or other Property.

School trustee corporations can dispose, by sale or otherwise, of any school site or school property which may not be required by them, in

\* The following is the form of Deed:—

#### Form of Deed for the Site of the School-House, Teacher's Residence, &c.

THIS INDENTURE, made the — day of —, in the year of our Lord one thousand eight hundred and —, in pursuance of the School Acts of Ontario, and of the Act respecting the transfer of real property, between —, of the Township (Village, Town, or City) of —, in the County of —, and Province of Ontario, — (Business or Calling), of the first part; —, wife of the said party of the first part, of the second part; and the Public School Trustees, of Section No. —, in the Township of —, in the County of —, and Province aforesaid, of the third part:

WITNESSETH, that in consideration of — dollars of lawful money of Canada, now paid by the said Trustees to the said party of the first part (the receipt whereof is hereby by him acknowledged), he, the said party of the first part, doth grant unto the said Trustees of the School Section aforesaid, their successors and assigns for ever, all and singular that parcel of land [describing it in full]:

TO HAVE AND TO HOLD the same, in trust to and for the use of a Public School (and Teacher's Residence), in and for School Section No. —, in the Township of —, and in the County and Province aforesaid, according to the provisions of the School Acts of Ontario, and for the education of the resident youth of said School Section,

The said party of the first part COVENANTS with the said Trustees that he hath the right to convey the said lands to the said Trustees, notwithstanding any act of the said party of the first part: And that the said Trustees shall have quiet possession of said lands, FREE FROM ALL INCUMBRANCES: And the said party of the first part COVENANTS with the said Trustees, that he has done no act to encumber the said lands: and the said party of the first part releases to the said trustees all his claims upon the said lands: And the said party of the second part hereby bars her dower in the said lands.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals, in the day and year before mentioned.

Signed, sealed, and delivered,  
in presence of

H. T. }  
C. T. } Witnesses.

J. G. [Seller's Seal.]  
F. R. [Seller's Wife's Seal.]  
T. H. }  
M. B. } Trustees'  
I. B. } Corporate Seal.

NOTE.—When the land has descended to the wife in her own right, she must, besides joining with her husband in the Conveyance, appear before two Justices of the Peace, to declare that she has parted with her estate in the land intended to be conveyed, without any coercion, or fear of coercion by or on the part of her husband; and the certificates of such Justices must appear on the back of the conveyance on the day of its execution. The form of their Certificate is as follows:

"We [inserting the names], Justices of the Peace for the County of —, do hereby certify that on this — day of —, 187 —, at —, the within deed was duly executed in our presence, by —, the wife of —, one of the grantors therein named; and that the said wife of said —, at the said time and place, being examined by us, apart from her husband, did appear to give her consent to convey with her estate in the lands mentioned in the said deed, freely and voluntarily, and without coercion or fear of coercion on the part of her husband, or of any other person or persons whatsoever.

Dated this — day of —, 187 —.

"R. W.—, J. P.  
"A. M.—, J. P.

consequence of a change of school site, and convey the same under their corporate seal. They are required to apply the proceeds of the sale to lawful school purposes. All sites and other property given or acquired for public school purposes vests, therefore, absolutely in the trustee corporation for this purpose. (See chapter on "School Sites.")

### 9.—What constitutes adequate School Accommodation.

The law declares that trustees "shall provide adequate accommodations for all the children of school age [i.e. between the ages of five and twenty-one years, resident] in their school division" (i.e., school section, city, town, or village). The "accommodation," to be adequate, should include:

(1.) *Size of Site*.—A site of an acre in extent, but not less than half-an-acre.

(2.) *Size of Rooms*.—A school house (with separate rooms where the number of pupils on the roll exceeds fifty), the walls of which shall not be less than ten feet high in the clear, and which shall not contain less than nine square feet on the floor for each child in attendance, so as to allow an area in each room for at least one hundred cubic feet of air for each child.\* The rooms must also be sufficiently warmed and ventilated, and the premises properly drained.

(3.) *Fence*.—A sufficient fence or paling round the school premises.

(4.) *A Play Ground*, or other satisfactory provision for physical exercise, within the fences, and off the road.

(5.) *A Well*, or other means of procuring water for the school.

(6.) *Separate Offices*.—Proper and separate offices for both sexes, at some little distance from the school house, from each other, and enclosed with a high and secure fence.

(7.) *Maps, Apparatus, and Library*.—Suitable school furniture and apparatus, desks, seats, blackboards, maps, library, presses, and books, &c., necessary for the efficient conduct of the school. (See section 14.)

*NOTE.—General directions to Trustees in regard to School Premises.*—The school ground should, in the rural sections, embrace an acre in extent, and not less than half-an-acre, so as to allow the school-house to be set well back from the road, and to furnish play-grounds within the fences. A convenient form for school grounds will be found to be an area of ten rods front by sixteen rods deep, with the school-house set back four or six rods from the road. The grounds should be strongly fenced, the yards and outhouses in the rear of the school-house being invariably separated by a high and tight board fence; the front grounds being planted with shade trees, shrubs, and flowers in their season. Various simple plants, required for illustration in the lessons on botany, might be cultivated near the school-house. Flowers, beautiful in themselves, have a most delightful and humanizing influence on children and youth, who should be taught to care for and preserve them from harm on the school premises.

### 10.—Erection of School House, Teacher's Residence, &c.

The trustees alone have the right to decide upon the cost, size and description of school house, or teacher's residence, which they shall

\* Thus, for instance, a room for fifty children would require space for 5,000 cubic feet of air. This would be equal to a cube of the following dimensions in feet, viz.: 25 × 20 × 10, which is equivalent to a room 25 feet long by 20 wide and 10 feet high.

erect. No ratepayer, public meeting, or committee has any authority to interfere with them in this matter. They have also full power to decide what fences, outbuildings, sheds and other accommodations shall be provided, as explained in section 9. To them also exclusively belongs the duty of having the school grounds planted with shade trees, and properly laid out. The power of the school meeting is limited to the single question as to *how* the money required by the trustees shall be raised, whether by the trustees themselves, or by the Township Council.

#### 11.—Restriction on the Use of the School House.

No school house or lot (unless so provided for in the deed), or any building, furniture, or other thing pertaining thereto, shall be used or occupied for any other purpose than for the use and accommodation of the public schools of the section or division, without the express permission of the trustee corporation, and then only after school hours, and on condition that all damages be made good, and cleaning, sweeping, &c., promptly done, or compensation made.

#### 12.—Duty of the Trustees in Regard to the Care and Repair of School House.

Trustees are requested to appoint one of their number, the Secretary-Treasurer or other responsible person, and give him authority, as well as make it his duty, to keep the school-house in good repair. He should also see to it that the windows are properly filled with glass; that, at a proper season the stove and pipe are in a fit condition, and suitable wood provided; that the desks and seats are in good repair; that the outhouses are properly provided with doors, and are frequently cleaned; that the black-boards are kept painted, the water supply abundant, and everything is provided necessary for the comfort of the pupil and the efficiency of the school.

#### 13.—Decisions of the Superior Courts in regard to the School-House.

(1.) *Trustees can levy a rate for the erection of a School-House.*—The Court of Queen's Bench has decided that, under the School Act, school trustees are authorized to levy a rate for the erection of a school-house in their section.—*Chief Superintendent of Education, appellant in re Kelly v. Hedges, Burford, and 13, Windham.* 12 Q. B. R. 531.

(2.) *School-House Contracts not valid without Trustee Corporate Seal.*—The Court of Common Pleas has decided that the Trustees of a School Section, being a corporation under the School Acts, are not liable as such to pay for a school-house erected for and accepted by them, not having contracted under seal for the erection of the same. The seal is required as authenticating the concurrence of the whole body corporate.—*Marshall v. Trustees, No. 4, Kitley.* 4 C. P. R. 375.

NOTE.—Such a contract, not being binding on the corporation, would be binding on the individual trustees who made it with a third party, acting in good faith. *Query*, whether the trustee-corporation would not, by subsequently taking possession of the school-house, or by some other act, recognise the validity of the contract?

(3.) *Contract under Seal, signed by a majority of the Corporation, binding.*—The same Court has also decided the following case:—A contract was entered into by two of the trustees of a section under their corporate seal for building a school-



house: after the house was built the Trustees refused to pay, on the plea that the contract was not legal, a jury having given a verdict in favour of the trustees, a new trial was ordered, and the former verdict in favour of the trustees was set aside.—The Court held that a contract entered into by two trustees under the School Act, with the corporate seal attached, is sufficient; and a plea that the contract was signed by the two subscribing trustees, without the consent or approbation of the third was held bad.—*Forbes v. Trustees, No. 8, Plympton.* 8 C. P. R. 73, 74.

(4.) *Alteration of boundaries no valid ground for refusing to levy Rate to pay for a School-House.*—The same Court has decided the following case:—The plaintiff recovered a judgment in March, 1858, against the school trustees for a debt due to him for building a school-house for the section, and made several unsuccessful attempts to obtain payment of the same from the trustees and their successors in office. The trustees always refused to levy a rate, or to pay the judgment. To an application for a *mandamus*, to compel the trustees to levy a rate for payment of the judgment, the Court held that it was no answer that, since the recovery of the judgment, two alterations had been made in the limits of the section, and that many changes had taken place among the rate-payers originally liable; or that the merits of the claim upon which the judgment was founded were capable of being impeached.—*Johnston v. School Trustees of Harwich*, 20 Q. B. 264, distinguished. *Scott v. Trustees, No 1. Burgess, and 2 Bathurst.* 21 C. P. R. 398.

(5.) *School-House and Site in use not liable to be sold on judgment against Trustee Corporation.*—The Court of Queen's Bench has given judgment as follows: In a case in which a school-site had been given to the trustees for the purposes of a school (with the condition that it should revert to the giver in case it should cease to be used for school purposes), and on which they had erected a school-house, judgment was obtained against the corporation for the money due on the building contract. The school-house and site were actually sold and deeded by the Sheriff; but the Court held, that the house and land could not lawfully be sold—it being contrary to public policy that a school-house in daily use (any more than a court-house or jail) should be held liable upon a writ of execution, as not the trustees, but the inhabitants of the section, are the *cestui que trust* (i.e., the persons for whose benefit the trust is held). The plaintiff should have resorted to his other remedies against the trustees for neglect of duty, &c. [as provided in the twentieth clause of the twenty-seventh section of the Consolidated School Act.]—*Scott v. Trustees of Union Section, No. 1 Burgess and 2 Bathurst.* 19 Q. B. R. 484.

(6.) *Trespass on the School-House.*—The Court of Queen's Bench has decided that the trustees of the school, and not the teacher, should sue for a trespass on the school-house; unless it can be shown that the trustees have given the teacher a particular interest in the building, beyond the mere liberty of occupying it during the day for the purpose of teaching.—*Monaghan v. Ferguson et al., No. —, London.* 3 Q. B. R. 484.

(7.) *The Assessment Act exempts from taxation "every public school-house, with the land attached thereto, and the personal property belonging to it."*

*NOTE.*—See chapter on "School Meetings," and Decisions of the Courts in regard to School sites.

### III.—POWER AND DUTIES OF TRUSTEES IN REGARD TO THE SCHOOL, TEACHERS, &c.

#### 14.—Right of Trustees in regard to Teacher, Apparatus, Books, &c.

The trustees alone, and *not any public meeting*, have the right to decide what teacher shall be employed, how much shall be paid to him, what apparatus, library, prize, and text books shall be purchased, what repairs, contingent expenses for stationery, postage, warming

and cleaning the school-house, &c., shall be authorized (as explained in section 12, preceding); in short, every thing they may think expedient to do for the interests of the school.

#### 15.—Who shall Determine the Expenses of the School.

The majority of the trustees of every school section have the right to decide what expenses they will incur for maps, school furniture, apparatus, library and prize books, salaries of teachers, rent of school-house, warming, cleaning, repairs, contingent and all other expenses of their school (as explained in the preceding section). The trustees are not required to refer such matters to any public meeting whatever, since they alone have the right to decide as to the nature and amount of any expenses which they may judge it expedient to incur for such purposes.

#### 16.—Trustees to Establish Free Public School Library.

Trustees are required, under the general regulations, to establish a free public school library for the children and ratepayers of their section. They can appoint and pay any competent person to act as librarian. In case they do not appoint any such person, the teacher is required to act as librarian *ex-officio* for the section. (See chapter IX., relating to teachers.)

NOTE.—The property of every public library is exempt from taxation. One hundred per cent. is allowed by the Chief Superintendent on all sums over \$5, remitted to the department for library books, maps, apparatus, and prize books.

#### 17.—Who have a right to attend the School.—Restrictions.

Trustees are required by law to provide accommodation for, and admit to their school, the children of all resident and non-resident ratepayers\* of their section, between the age of five and twenty-one years, so long as their conduct is in conformity with the general regulations, and "the rules of the school, and the rates required to be paid on their behalf are fully discharged."

NOTE.—The trustees have no authority to provide accommodation for, or admit to their school, the children of any non-residents who are not *bona fide* ratepayers of their section; nor can they under any pretence (such as volunteer payments, or subscriptions) collect or receive fees or rate-bills from such non-residents for admission to the school. (See section 4, of chapter IV., relating to non-residents.)

#### 18.—Authorized Text Books can be alone used.

The Act declares that trustees shall "see that no unauthorized text books are used in the schools, and that the pupils are duly supplied with a uniform series of authorized text books sanctioned and recommended by the Council of Public Instruction." The Act

\* The law declares that the child or children of non-resident ratepayers "shall not be returned as attending any other than the school of the section in which the parents or guardians of such child or children reside." The trustees and teacher of a school at which non-resident ratepayers' children attend, must see that the law is complied with in this respect.

further declares that "no person shall use any foreign books in the branches of English education in any school, without the express permission of the Council of Public Instruction."

**19.—Trustees' Visitation of the School—their responsibility for it.**

The Act requires the trustees "to visit from time to time, each school under their charge, and see that it is conducted according to the authorized regulations, and that each such school is, at all times, duly provided with a [school and general] register and visitors' book, in the form prepared according to law." They are also required "to procure annually, for the benefit of their school section, some periodical devoted to education."

NOTE.—The individual power of a trustee in a school is limited. It does not include any right on his part to interfere with the teacher in his administration of discipline in the school, nor in his mode of teaching. The teacher is not in any way subject to the direction of an individual trustee, unless acting under the express authority of both of his colleagues. In no case has a trustee the right to reprove or censure a teacher in the presence of any of his pupils.

**20.—Second or Female School—unite with High School.**

Trustees are authorized "to establish, if they deem it expedient, with the consent of the County Inspector of schools, both a female and male school in the section, each of which schools shall be subject to the same regulations and obligations as public schools generally; and "when a second school-house is required, then to rent, repair, furnish, warm and keep in order a house, and its appendages, to be used as a school-house. They are further authorized "to take such steps as they may judge expedient to unite their school with any high school, which may be within or adjacent to the limits of their section."

**21.—Duty of Trustees and Teacher to report to the Inspector.**

The law declares that a school section shall forfeit its share of the school fund, and the trustees become personally responsible for such loss, should they or the teacher fail to furnish the Inspector with a full and satisfactory report every six months and at the end of the year in the form provided. From the instructions printed on the reports themselves, trustees will see that the inspectors are directed to return to them all incomplete or incorrect reports.

**22.—Orders to be given to qualified Teachers only for the School Fund.**

Trustees are authorised "to give the teachers employed by them (and to none others) the necessary orders upon the county inspector for the school fund apportioned and payable to their school section; but they shall not give such order in behalf of any teacher (or assistant), except for the actual time during which said teacher, while employed, held a legal certificate of qualification."

NOTE.—Trustees sometimes omit the giving of such orders to “teachers employed by them,” and thus, designedly or unwittingly, evade the law. They do so for one of four reasons, viz.: (1), if they have advanced the money to the teacher themselves; or (2), have paid him by orders on a store; or (3), if they have employed a teacher without the legal qualifications; or (4), if they wish to aid a male teacher to evade paying the half-yearly superannuation money. In all these cases inspectors should remonstrate with trustees, and in case of a repetition of the evasion, withhold the grant to the section. Every order should be made out in favour of the teacher employed during the time for which it is issued. (See chapter IX.)

### CHAPTER III.

#### POWERS AND DUTIES OF A SCHOOL SECRETARY-TREASURER AND COLLECTOR.

##### 1.—Appointment and Duties of a Secretary-Treasurer.

The trustees are required “To appoint one of themselves, or some other person, to be secretary-treasurer to the corporation.” The secretary-treasurer shall give such security as may be required by a majority of the trustees. The trustees must take this security and deposit it for safe keeping with the township council. The object of the appointment of a secretary-treasurer is:—

(1.) *Safety of Papers.*—For the correct and safe keeping and forthcoming (when called for) of the papers and moneys belonging to the corporation;

(2.) *Record of Proceedings.*—For the correct keeping of a record of all their proceedings, in a book procured for that purpose;

(3.) *Accounts for Moneys.*—For the receiving and accounting for all school moneys, collected by school rate, subscription, or otherwise, from the inhabitants of such school section;

(4.) *Payment of Moneys.*—For the disbursing of such moneys in the manner directed by the majority of the trustees.

(5.) *Repair of House.*—And for seeing to the repair of the school-house, and care of the school premises if desired by the trustees. (See section 12 of chapter II.)

##### 2.—Penalty on Secretary-Treasurer or Trustee for refusing to Account.

Should any secretary-treasurer or trustee withhold or refuse at any time “to deliver up, pay over, or account for any books, papers, chattels, or moneys, which came into his possession as such secretary-treasurer, or trustee, \* \* \* or any part thereof to the person, and in the manner directed by a majority of the school trustees for the school section then in office, such withholding or

refusal shall be a misdemeanour." And the County Judge is authorized, on the application and affidavit of two trustees or two rate payers to direct the delinquent secretary-treasurer or trustee forthwith to deliver up or account for the property in his hands upon pain of imprisonment, without bail until the order is complied with.

### 3.—Legal Proceedings by Trustees against a Defaulting Secretary-Treasurer.

The Court of Queen's Bench has also decided, that a trustee corporation could maintain an action "for money had and received" against their secretary-treasurer, to recover money in his hands not expended or accounted for. *Trustees of Section 7, Stephen v. Mitchell*, 29 Q. B. R., 382.

### 4.—Appointment and Duties of a School Collector.

The Trustees are authorized to appoint one of themselves, or some other competent person, to be a collector of school rates. This collector may also be their secretary-treasurer. Under a warrant from the trustees, the collector is authorized and required to collect the rates imposed by them upon the inhabitants of their school section, or any sums which such inhabitants may have subscribed. The trustees are authorized to pay the collector at the rate of not less than *five*, or more than *ten* per cent. on the moneys collected by him. The law gives the collector the same powers (by virtue of a warrant signed by a majority of the trustees) in collecting the school-rate or subscription, and places him under the same liability and obligations, and he must proceed in the same manner in his school section and township, as a township collector does in collecting rates in a township or county, as provided in the Municipal Corporation and Assessment Acts which may be in force at the time of collecting the rate. The collector is required to give such security as may be satisfactory to the trustees, which security shall be lodged with the township council, as provided in the School Law of 1871.\*

NOTE.—The Collector is entitled to his fee on all school rates entered on the Roll when handed to him by the Trustees, even should any of the rates be paid in to the Trustees, the Secretary or Teacher in the meantime. He must be careful to proceed in strict accordance with the law in the performance of his duty.

\* The security referred to should be given in the following form:—

#### *Bond of Collector of School-rates, or Secretary-Treasurer.*

Know all men by these presents: That W. H., of C., *Collector of school-rates, [or Secretary-Treasurer, or both, as the case may be]*, for School Section No. —, in the Township of —, in the County of —, and Province of Ontario, and F. E., of H., in the said Province, are firmly bound to A. B., and C., Trustees of the School Section aforesaid, in the sum of — dollars, for which payment well and truly paid to the said Trustees, or their successors in office, for which payment well and truly to be made to the said Trustees, we bind ourselves jointly and severally, our heirs, executors and administrators firmly by these presents.

Sealed with our seals, and dated at O, this — day of —, in the year of our Lord one thousand eight hundred and seventy —.

The condition of this bond is such, that if the above bounden A. B., shall use all diligence and employ all the powers vested in him to collect all school-rates and assessments of the said Section for which he has been appointed collector, (or in case of non-residents shall make oath of his inability after diligent search to collect the rates due,) and shall pay or cause to be paid over

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### 5.—Trustee School-Rate Roll and Warrant.

The trustees are required to make out, or have made out, from the Township Assessor's, or Collector's roll, a list of all persons rated by them for the school purposes of their section, and shall annex to such list a warrant directed to the collector of the section, for the collection of the several sums mentioned in such list. The list and warrant should be in the following form:—

(1.) *Public School Rate Roll of Section No. —, Township of —.*

Name of Person rated.	Description of Taxable Property.	Taxable Value.	Rate in the Dollar.	Amount of Tax. \$ cts.

We, the undersigned Trustees of School Section No. —, in the Township of —, hereby certify that we have levied the foregoing School-rate upon taxable property in our Section, according to the valuation of that property, as expressed in the Township Assessor's [or Collector's] Roll for the year 187 —.

To this List we hereto annex our warrant for the collection of the foregoing Rate, addressed to A. B., our School Collector.

Dated at —, —, 187 —.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
} Trustees'  
Corporate  
Seal.

#### (2.) *Form of Warrant for the Collection of Public School Rates.*

To A. B., Collector of Public School Rates, Section No. —, Township of —,

We, the undersigned Public School Trustees of Section No. —, in the Township of —, in the County of —, by virtue of the authority vested in us by the Ontario Public School Acts, hereby authorize and require you [here insert the name and residence of the person appointed to collect the school-rate] after ten days from the date hereof, to collect from the several individuals in the annexed School-rate Roll, the sum of money set opposite their respective names, and to pay the amount so collected, within — days from the receipt thereof, after retaining your own fees, to our Secretary-Treasurer, whose discharge shall be your acquittance for the sum so paid. And in default of payment on demand by any person so rated, you are hereby authorized and required to levy the amount, with costs, by distress and sale of the goods and chattels of the person or persons making default, and found upon the premises rated, or within the township [or townships] out of which this school section is formed.

Given under our hands and Corporate seal of office,  
this — day of —, 187 —.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
} Trustees'  
Corporate  
Seal.

NOTE.—In regard to non-residents, railways, and other matters, see Directions to Collectors, and Decisions of the Courts, &c., further on.

all moneys which he may collect (except his own per centage) to the *Trustees' Secretary-Treasurer* of the said School Section, within — days from the receipt by him of such sum collected, and shall make a full return within — days from the date of these presents, then this obligation shall be null and void, otherwise it shall remain in full force and virtue.

Signed, sealed, and delivered  
in presence of J. G. }  
F. B. }

W. H., Collector [Seal.]  
F. E., Surety for Collector [Seal.]

NOTE.—This Bond must be lodged with the township council. If the bond be for a secretary-treasurer alone, insert the following instead of "shall use," &c.: "shall correctly keep all the papers belonging to the school corporation, and shall receive and safely keep, and faithfully disburse, upon the order of the majority of the aforesaid trustees alone, all moneys collected by rate-bill, subscription, or otherwise, by the authority of the said trustees, and shall deliver up to the order in writing of a [school auditor, or] majority of the aforesaid trustees, when called for, all such papers and vouchers in his custody, and all such moneys, not paid out as aforesaid."

### 6.—For what a Section School Rate may be Collected.

A school-rate may be lawfully collected for any of the school purposes enumerated in sections 9 to 15, inclusive, of chapter I.

### 7.—For what a Section School Rate can not be Collected.

No rate can be lawfully levied:—

(1.) *Teacher's Salary.*—To pay the salary of any teacher or assistant who does not, during the whole time of his employment by the trustees, possess a legal certificate of qualification.

(2.) *Trustees' Claim.*—To pay any claim of a co-trustee for anything except a school-site, or as remuneration for acting as a collector of school rates.

(3.) *Cost of Suits.*—To pay costs of an illegal suit, or for unsuccessfully defending a suit brought against them for illegal acts.

(4.) *Unnecessary Expenses.*—For unnecessary travelling expenses, &c.

(5.) *For Excessive Interest,* and the expenses of unauthorized loans, &c.

NOTE.—Persons often illegally refuse to pay school rates levied by trustees, because—

(1.) A trustee may have omitted to make the declaration of office.

(2.) And because trustees have no school-site deed; but neither of these objections are valid. The law provides other means of meeting such cases.

### 8.—Trustees to have access to Township Assessor's or Collector's Roll.

The township assessor is required to deliver to the township clerk, not later than the middle of April in each year, his assessment roll, completed and added up. From this roll, as finally approved by the township court of revision, the clerk is required to make out a township collector's roll. The clerk, or other officer having possession of the assessor's or collector's roll, is required to allow any one of the trustees, or their authorized collector, to make a copy of it, so far as it relates to their school section.

NOTE.—*Assessors to Value Lands situated in each Section.*—The School Law declares that: "Whenever the lands or property of any individual or company are situated within the limits of two or more school sections, each assessor appointed by any municipality, shall assess and return on his roll, separately, the parts of such lands or property, according to the divisions of the school sections within the limits of which such lands or property may be situate; but every undivided occupied lot, or part of a lot, shall only be liable to be assessed for school purposes in the school section where the occupant resides. (See clause (5), of next section.)

### 9.—How the Trustees must be guided in making out the Collector's Roll.

(1.) *School Trustees.*—The trustees, in making out their collector's roll, must be guided by the school map of the township, in case there should be any doubt or dispute as to the school boundaries. The clerk is required, under a penalty, to make this map, and allow the

trustees' assessor or collector to have access to it. They must also adhere strictly to the township assessor's or collector's roll, in regard to the names of persons taxed, and the valuation of their property.

(2.) *Omission*.—Should any omission or mistake be discovered in the township roll, the council is authorized to correct it, so far as it relates to each school section.

(3.) *No Omissions*.—The trustees must omit no taxable property in the section from their list; but they may authorize their collector to exempt from payment of the taxes imposed by them, any indigent person in their section.

(4.) *Inequality of Assessment*.—In case of an inequality in the roll of assessment in the parts of union sections, the Reeves and inspector concerned are required to equalize the assessments of the various parts.

(5.) *Undivided Lot*.—In the case of an undivided lot (that is, the whole or a portion of an original 200 acre lot, owned by one person), lying in one or more sections, and having the owner's or occupant's residence thereon, it must be assessed only in the section in which the owner or occupant resides. (See note to section 8 of this chapter.)

NOTE.—A "lot," as here spoken of, is one which contained two hundred acres, more or less, according to the original survey, and owned or occupied by a single individual or company. "Part of a lot" is part of an original two hundred acre lot, owned or occupied by a single individual, or company. If two or more such parts of a lot should become, at any future time, the property of a single owner, they must then be held to form but part, or the whole of one lot, in the sense of the Act.

(2.) *An Undivided Lot must be in the same Municipality*.—*Municipal Boundaries divide Lots*.—The Court of Queen's Bench has decided the following case: Certain property, through which ran a municipal division-line between a town and a township, was assessed by the trustees of a school section in the township, according to the value of that portion of it lying in their section and outside the town. The owner refused to pay, and was sued by the trustees as a non-resident, in accordance with the provisions of the school-Law. The Judge of the Division Court decided against the trustees, on the ground that the [thirty-second] section of the Consolidated School Act referred to undivided lots within different municipalities, as well as within one municipality. The Chief Superintendent appealed the case, and it was held by the court that the trustees acted rightly,—they being guided by the assessment roll of their municipality; and that the proviso referred to applies only to the case of an undivided property extending into more than one school section of the same municipality, and not where the land lies in different municipalities. Hence municipal boundaries divide lots.—*Chief Superintendent of Education, appellant, in re Trustees, No. 4, Hallowell v. Storm. 14 Q. B. R. 541.*

(6.) *Taxes levied equally upon all ratable property*.—The eighth section of the Assessment Act provides that "all municipal, local, or direct taxes or rates, shall, when no other express provision has been made in this respect, be levied equally upon the whole ratable property, real and personal, of the municipality or other locality, according to the assessed value of such property, and not upon any one or more kinds of property in particular or in different proportions." Property rates must, therefore, be levied equally on all tax-

able property of the ratepayers in the section, whether residents or non-residents. (For definition of non-residents' land see chapter IV.)

(7.) *No Rate Bills.*—No rate bill for tuition, fuel, or any other contingencies, can be levied on pupils, or on parents or guardians, as such, or on non-residents, who own no property in the section. The rate must be levied upon all the taxable property in the section (and is a lien upon it), but it must be levied in the name of the individuals mentioned on the assessor's or collector's roll, whether resident or non-resident.

(8.) *Owner and Occupant.*—The Assessment of Property Act declares that:—"When land is assessed against both the owner and occupant, or owner and tenant, the assessor shall place both names within brackets on the roll, and shall write opposite the name of the owner the letter F., and opposite the name of the occupant or tenant the letter H. or T.; and both names shall be numbered on the roll, \* \* \* and the taxes may be recovered from either, or from any future owner or occupant, saving his recourse against any other person." (Section 26.)

(9.) *Many Owners.*—When land is owned or occupied by more persons than one, and all their names are given to the assessor, they shall be assessed therefor, in the proportion belonging respectively to each; and if a portion of the land so situated is owned by parties who are non-resident, and who have not required their names to be entered on the roll, the whole of the property, shall be assessed in the names given to the assessor, saving the recourse of the persons whose names are so given against the others. (27.)

(10.) *Unpatented Land,* vested in or held by Her Majesty, which shall hereafter be sold or agreed to be sold to any person, or which shall be located as a free grant, shall be liable to taxation from the date of such sale or grant, \* \* \* in the same way as other land, whether any license of occupation, location ticket, certificate of sale, or receipt for money paid on such sale, has or has not been, or shall or shall not be issued, and (in case of sale or agreement of sale by the Crown) whether any payment has or has not been, or shall or shall not be, made thereon, and whether any part of the purchase money is or is not overdue and unpaid." (127.)

#### 10.—Powers, Duties and Liabilities of Collectors of School Rates.\*

These "powers" of, and the mode of "proceeding" observed by, township and county collectors, are prescribed in the Assessment of Property Act, 32 Vict. Cap. 36. They are adapted to collectors of school-rates as follows:—

\* For protection of collectors when acting under a lawful warrant, see decisions of Court of Common Pleas, on pages 15 and 32.

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(1.) *Collector shall call for the rate.*—The collector, on receiving his warrant and the roll, [see page 25] shall call on the party rated, if residing within or near the section, and demand payment; if a non-resident, he may see him, or send by post a statement of the demand. The entry of the date of such demand on his roll opposite the name, shall be *prima facie* proof of the demand. (94.)

(2.) *Shall seize Goods and Chattels of defaulters.*—In case any person neglects to pay his taxes fourteen days after demand made, the school collector may levy the same, with the costs payable to a division court bailiff, by distress of the goods and chattels of the person who ought to pay the same, or of any goods in his possession, wherever the same may be found within the township [or townships] out of which the school section is formed, or of any goods or chattels found on the premises, the property, or in the possession of, any other occupant of the premises. (95).

(3.) *Shall give Public notice, and sell by Auction.*—He shall give notice of the day of sale and the name of the defaulter, in not less than three public places in the place where the sale is to be held, at least six days before the day of sale, and shall sell by public auction the property so seized, or so much of it as shall satisfy the debt and costs. (98.) Any person wilfully tearing down, injuring, or defacing such notice, or the assessment roll, shall be liable to a fine, before a magistrate, of twenty dollars, or twenty days imprisonment. (201.)

(4.) *How to dispose of Surplus.*—If the property has been sold for more than the rate and costs, and if no claim be made by some other person on the ground of ownership, lien, or other right, he shall return the surplus to the party who was in possession when it was seized, or to such other claimant whose right to it is admitted by the other party. If there be a dispute between them as to the ownership, the surplus shall be paid over to the municipal treasurer until the dispute be settled. (99-101.)

(5.) *Liability of Railway Companies in School Sections.*—"The real estate of a railway company (in a school section) is to be considered as the land of a resident." (7.) And the company is to transmit annually to the clerk of the municipality, a statement of the value of all their real property, within the municipality, the vacant land not in actual use, and the actual value of the land occupied by the road itself; the clerk shall communicate the same to the assessor, and the trustees shall copy it from the assessor's roll and place it upon the collector's roll, with the amount of tax thereon. The collector shall deliver at, or transmit by post to, any station or office of the company, a notice of the total amount at which the trustees have assessed the real property, vacant lands, and the land occupied by the roadway, and collect the tax at any station or office of the company. (33).



**NOTE.**—The trustees are required to send or deliver a bill to the railway company in the following form:—

**DETAILS OF RAILWAY SCHOOL TAX.**

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 187 , The \_\_\_\_\_ Railway Co.,  
To the Public School Trustees of Section No. —, in the Township of \_\_\_\_\_,

**DR.** to the amount of Public School Tax levied on the following  
Railway land and property lying within the boundaries of this  
School Section, viz., \_\_\_\_\_ \$ \_\_\_\_\_  
at the rate of \_\_\_\_\_ in the Dollar, on \$ \_\_\_\_\_, the assessed  
value of such lands and property, as per Township Assessor's  
Roll for the year 187 .

Received payment this \_\_\_\_\_ day of \_\_\_\_\_ 187 .

Public School Collector of the Section  
(or Secretary-Treasurer).

(6.) *Omitted Assessments and Mistakes.*—The School Act authorizes the township council to correct any error in the assessment roll of the section, as certified by the trustees.

(7.) *Collector to make return at the time specified in the warrant, &c.*—The collector shall return his roll to the trustees, and pay over the proceeds, within the time fixed in the bond to the trustees, or their warrant to him, otherwise another person may be employed to collect the taxes which the collector does not collect within the time specified. (103-104.)

(8.) *Taxes to be a Special Lien upon land.*—The taxes accrued on any land, shall be a special lien on such land, having preference over any claim, lien, privilege, or incumbrance, of any party except the Crown, and shall not require registration to preserve it. (107.)

(9.) *Punishment of Clerks, Assessors or Collectors, making fraudulent Assessments, Collections, &c.*—If any clerk, assessor, or collector makes any unjust or fraudulent assessment or collection, or copy of any assessor's or collector's roll, or wilfully and fraudulently inserts therein the name of any person who should not be entered, or wilfully omits any duty required of him by this Act, he shall, upon conviction thereof before a court of competent jurisdiction, be liable to a fine not exceeding two hundred dollars, and to imprisonment until the fine be paid, or to imprisonment in the common gaol of the county or city for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the court. (177.)

(10.) *Proceedings for compelling Collectors to account for or pay over Moneys in their hands.*—If a collector refuses or neglects to pay to the proper treasurer, or chamberlain, or other person legally authorized to receive the same, the sums contained in his roll, or duly to account for the same as uncollected, the treasurer or chamberlain shall, within twenty days after the time when the payment ought to have been made, issue a warrant under his hand and

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seal, directed to the sheriff of the county, or to the high bailiff of the city, (as the case may be), commanding him to levy of the goods, chattels, lands and tenements of the collector and his sureties, such sum as remains unpaid and unaccounted for, and to return the warrant within forty days after the date thereof. (181.)

# 11.—Decisions of the Superior Courts in regard to School-Rates and Collectors.

(1.) *Collector's Sureties not responsible for Uncollected Rates, nor for Collector's default, unless they so bind themselves in the bond.*—The Court of Common Pleas has decided the following case: A person having been duly appointed collector by the trustees of a school section, signed the following contract at the foot of the instrument appointing him: "I agree, &c., &c., to collect, &c., according to the said Act, and bind myself, by my securities, in the sum of £250;" and immediately under, his sureties signed the following undertaking: "We hereby agree to become security for the due fulfilment of the above contract." The collector paid over a portion of the amount collected by him, leaving a certain sum remaining uncollected. An action was brought by the trustees against the collector and his sureties. *Held*, that the sureties, under their contract, were not jointly liable with their principal for moneys uncollected by him; also that they were not jointly liable on their guarantee as sureties on default of the principal—the contract only extending to the collection of the rate.—*Trustees No. 6, York v. William Hunter et al.* 10 C. P. R. 359.

(2.) *Note of Hand no legal Payment of School-Rate.*—The Court of Queen's Bench has decided the following case on a *replevin* [see Index] for horses: *Plea*,—justifying the taking under a warrant for school taxes, and alleging that they were delivered by the collector to defendant, an innkeeper to take care of until the sale. *Replication*,—setting out facts to show the rate illegal, and averring that plaintiff, after seizure of the goods, at the request of the collector and trustees, gave his note for a sum named, (not saying that it was the amount due by him,) payable to bearer, which was accepted in satisfaction of the taxes; that the collector released the property seized, and said note is still outstanding, and the plaintiff liable upon it, and that the seizure in the plea mentioned was made afterwards. *Held*, on demurrer, replication bad; for, 1st, the collector acting under a warrant legal on the face of it, would not be liable in trespass or trover, and therefore not in this action, nor the defendant for taking the horses from him to keep; and, 2nd, Even if the note had been for a sufficient amount to pay the rate, yet the improper acceptance of it by the trustees would not prevent them from afterwards distraining.—*Spry v. McKenzie.* 18 Q. B. R. 161.

(3.) *Extension of time for collecting School-Rates—Duration of Collector's authority.*—The Court of Queen's Bench has decided the following case: The time for levying a school-tax in the city of Kingston, imposed by by-law in December, 1855, was extended by resolutions of the city council, under 18 Vic. c. 21, s. 3, until the 1st of August, 1856; and again, on the 22nd of December, 1856, to the 1st of March, 1857. *Held*, that the collector, who was the same person for both years, might distrain between the 1st of August and the 22nd of December, 1856, although no resolution extending the time was then in force. *McLean J.*, dissenting—*Newberry v. Stephens et al. City of Kingston.*—16 Q. B. R. 65.

NOTE.—As a doubt was expressed by one judge in this case, as to the legality of the extension of time, it would be better for trustees to issue a new warrant and take a fresh bond whenever the period mentioned in the bond expires.

(4.) *Right to collect School Taxes after the expiration of the Year.*—The Court of Queen's Bench has decided, on an appeal by the Chief Superintendent of Education, that a collector of school taxes might, in 1861, collect by distress the taxes for 1859 and 1860, not having made his final return of such taxes as in arrear,

and being still collector; and *semble*, that in this case the plaintiff, who complained of the seizure, having led to it by his own conduct, the proceeding should have been upheld in the Division Court at all events.—*Chief Superintendent of Education, appellant, in re McLean v. Farrell*. 21 Q. B. R. 441.

(5.) *Collector committing Trespass is entitled to Notice of Action.*—Limit.—The Court of Common Pleas has decided that a collector who committed a trespass while acting under a warrant issued by a competent authority, was entitled to notice of action, and that the action should be brought within six months.—*Spry v. Mumby et al.* No. 15, *Rawdon*. 11 C. P. R. 285.

(6.) *School Trustees have power to levy Rate at any time.*—Under the Acts relating to Public Schools, trustees may at any time impose and levy a rate for school purposes: they are not bound to wait until a copy of the revised assessment roll for the particular year has been transmitted to the clerk of the municipality, but may and can use the existing revised assessment roll.—*Chief Superintendent of Education, appellant, in re Hogg v. Rogers*. 15 C. P. R. 417.

(7.) *Expenses of the School must be defrayed by the authority of the Trustees, and not by the inhabitants themselves.*—The Court of Queen's Bench has decided that freeholders and householders of a school section cannot substitute a voluntary subscription among themselves, and a rate upon the parents and guardians of children alone, for the whole expenses of the school, instead of the provisions made by law; and a resolution to have such private subscription, which the trustees neglected to collect, is therefore no answer to an avowry by the trustees for a rate levied by them in the usual way.—*McMillan v. Rankin et al.* No. 14, *Kingston*. 19 Q. B. R. 356.

(8.) *School-tax upon Parents and Guardians unlawful.*—The Court of Common Pleas has also decided a similar case: A general school meeting passed the following resolution: "That the expenses of the school section be paid by voluntary subscription, and the balance to be raised from a tax to be levied upon the parents and guardians of those sending children to school," the school trustees, after the failure of the voluntary subscription, levied a general rate, upon which this replevin arose—the plaintiff contending that he was not liable, as not being a parent or guardian of a child attending the school. Held, that the trustees had no authority to tax the parents or guardians of those sending children, or to alter or annul the resolutions; and that the tenth clause of the twenty-seventh section of the School Act authorized the levy as made.—*Craig v. Rankin et al.* No. 14, *Kingston*. 10 C. P. R. 186.

(9.) *Form of, and number of, Signatures to Trustees' Warrant.*—The Court of Queen's Bench has decided that the warrant may be signed by two trustees [with the knowledge of the third]. In making cognisance under this warrant, it is sufficient to state that the plaintiff was duly assessed, and that the collector was duly appointed. It is not necessary to state therein that the rate was decided upon at a meeting, as required by statute, or how the appointment of collector was made.—*Gillies v. Wood*, No. 6, *Pikington*. 13 Q. B. R. 357.

(10.) *No Rate can be imposed by Trustees for the reimbursement of costs in defending Illegal Acts.*—The Court of Queen's Bench has decided that trustees cannot impose a rate to reimburse themselves for costs incurred in defending unsuccessfully a suit brought against them for levying an unauthorized rate, or for travelling expenses incurred in order to consult with the superintendent; but a rate may be levied to reimburse school trustees for the costs of defending a groundless action brought against them.—*Chief Superintendent of Education, appellant, in re Stark v. Montague*, 14 Q. B. R. 473; and *Tierman v. Municipality of Nepean*, 15 Q. B. R., 87.

(11.) *Mandamus against Clerk of a Township to permit Trustees to examine the Assessment Roll.*—The Court of Queen's Bench has decided that where, on an application for a mandamus, a demand and a refusal were sworn to, and defendant

in answer denied the refusal, and alleged that he had always been willing to do what was required, the Court nevertheless granted the writ.—*In re Trustees of Union School Section Nos. 15, Otonabee, 10, Douro, and 11, Asphodel v. Casement*. 17 Q. B. R. 275.

NOTE.—A *mandamus* is a command issuing in the name of the Sovereign from a superior court having jurisdiction, and is directed to some person, corporation, or inferior court, within the jurisdiction of such superior court, requiring them to do some particular thing therein specified, which appertains to their office and duty, or to show cause why he has not done it. This writ was introduced to prevent disorders from a failure of justice; therefore it ought to be used upon all occasions where the law has established no specific remedy, and where, in justice and good government there ought to be one.

(12.) *Testator's Estate liable for School Rate in the hands of Devises and Executors*.—The Court of Common Pleas decided as follows:—An action of replevin may be brought upon a distress for school rates, and notice of action is not necessary, where several devisees and executors were rated for a school rate in respect to the property of their testator as "John Applegarth and brothers," which entry appeared to have been made at the instance of some of them; but two of them only had slept on the premises occasionally, although such was not their ordinary place of residence, and they had received the usual notice of assessment in the form without appealing, and the same two had paid taxes on an assessment on the township roll in their individual names. *Held* by the Court:—1st, That the facts afforded sufficient evidence to show that the plaintiffs were "inhabitants" for the purposes of the rate; 2nd, That the parties were sufficiently named on the roll to render the rate lawful; 3rd, That a demand made by the collector on "John Applegarth," named on the roll, was sufficient to bind all the plaintiffs.—*Applegarth & al v. Graham, No. 3, Flamborough East*. 7 C. P. R. 171. (See "Non-Resident's, chapter IV.")

(13.) *Liability of Executors and Devises*.—The Court of Queen's Bench has decided that where executors and devisees in trust of land were assessed as owners. *Held* that they were properly so assessed, and that their own goods might be seized for the taxes.—*Dennison v. Henry*. 17 Q. B. R., 276.

## 12.—Application to Township Council to Collect Rates.

Before collecting any school rate the trustees should call a meeting of the ratepayers to decide whether the money required by the trustees for any purpose should be collected (1) by themselves (2) by the Township Council or (3) raised by loan, under the authority of the council. In case either the second or third mode be decided upon by the ratepayers, a copy of the resolution on the subject, together with an estimate of the sum required by the trustees, should be sent to the Township Council, at or before its August meeting. Should the second mode be decided on, the council, upon receiving the trustees' estimate, and a request in writing, must levy the whole of the required rate within a reasonable time, and pay it over to the trustees, (without any diminution for collector's fees or expenses— which must be added to the rate by the council.) Should the third mode be decided on, the council may grant the required permission at its discretion. Should the council do so, it should issue a debenture for the sum to be borrowed and, (as decided by the Courts,) provide the means for securing repayment of the amount borrowed, by a yearly rate imposed in the manner specified in the Act. (See chapter I, section 8, clause (F), note.)

### 13.—Township Council Required to raise Money for School Trustees.

The law declares that "For the purchase of a school site; the erection, repair, rent, and furniture of a school-house; the purchase of apparatus and text-books for the school, books for the library, and salary of the teacher, each township council shall levy, by assessment upon any taxable property in any school section, such sum as may be required by the trustees of such school section, in accordance with the desire of the majority of the freeholders and householders expressed at a public meeting called for that purpose."

NOTE.—In case of refusal, on the part of a township council, to levy the amount required by the trustees, the remedy is by mandamus from either the Court of Queen's Bench or Common Pleas. (Decisions of the Courts on this subject will be given in part II. of these lectures, and the whole law in regard to township councils.)

## CHAPTER IV.

### THE LAW RELATING TO NON-RESIDENTS.

#### 1.—A Resident of a School Section Defined.

(1.) A person who has his home, or place of business, in a section; and on which he pays taxes, is a resident; (2.) Apprentices; (3.) Railway Companies, having roadways, stations, &c., in a section; and (4.) *bona fide* settlers, whose names are not yet on the assessment roll are to be regarded as residents. (See clause (12), of section 11, of chapter III.)

#### 2.—A Non-Resident of a School Section Defined.

A "non-resident" of a school-section is one who does not reside or own taxable property in it. But a person may be a school rate-payer of a section, and yet not reside in it. Transient visitors, and children who come to remain in a section for a short time, are also non-residents.

#### 3.—Non-Residents Liable for Rates in their own Section.

A person paying rates in the section in which he resides does not thereby relieve himself from the payment of rates in his own or other section in which he is taxed; and although his children attend the school of a neighbouring section in which he pays rates, yet they must be returned only in the section in which he resides. (See next section.)

#### 4.—Rights of the Non-Resident Rate-Payers of a Section.

A non-resident rate-payer of a section (as defined above) has a right to send his children, or wards (if he be a guardian), to the school of



any section in which he pays school-rates; but "such children shall not be returned as attending any other than the school in the section in which their parents or guardians reside." (See next section.)

#### 5.—Restricted authority of Trustees in regard to Non-Residents.

With the exception of children and wards of non-resident rate-payers, trustees have no authority to admit to their school the children or wards of any other non-resident whatever; nor can they lawfully charge non-residents fees of any kind. (See section 18, chapter II.)

#### 6.—Definition of the "Lands of Non-Residents" in a School-Section.

The Assessment Act declares that "Unoccupied land owned by a person not resident, and not having a legal domicile, or place of business, in the township, village, town, or city where the same is situate, or whose residence or domicile or place of business therein cannot, upon diligent inquiry by the assessor, be found, and who has not signified to the assessor, personally or in writing, that he owns such lands and desires to be assessed therefor, shall be denominated 'lands of non-residents.'" 6. (See clause (8), of section 9, chapter III.)

#### 7.—To whom is Land not occupied by the Owner, but the Owner is known, to be Assessed?

The same act says: "As land not occupied by the owner, but of which the owner is known, and who, at the time of the assessment being made, resides, or has a legal domicile or place of business in the township, village, town, or city, or who has signified personally, or by writing, to the assessor, that he owns the land, and desires to be assessed therefor, the same shall be assessed against such owner alone, if the land is unoccupied, or against the owner and occupant, if such occupant be any other person than the owner. (24.)

#### 8.—To whom should Land be assessed when the Owner is unknown?

Further, the Act says: If the owner of the land be not resident, or be unknown, and has not requested to be assessed therefor, in the manner in the last section mentioned, then if the land is occupied, it shall be assessed in the name of and against the occupant; but if the land be not occupied, then it shall be assessed as land of a non-resident. (25.)

#### 9.—How to collect Rates from Non-Residents.

1.) *Assess Non-Residents.*—Non-residents owning taxable property in the section, should be assessed as other ratepayers. The collector shall, one month after delivery to him of the roll and warrant, and fourteen days after he has transmitted by post a statement and demand, levy for the amount due (with costs, payable to a division

court bailiff), and make distress of any goods and chattels found on the non-resident's land, "and no claim of property, lien, or privilege shall be available to prevent the sale, or the payment of the taxes and costs out of the proceeds thereof." He shall then advertise and sell, as in the case of other defaulters. (96-98.)

(2.) *Chattels*.—In case, after diligent inquiries, no goods or chattels can be found on the land in the section or township, and the resident lives near or is known, and still refuses payment of the rate, (or in case a person assessed moves out of the section and refuses payment), the trustees must sue such person in the division court.

(3.) *Return to Clerk*.—In case it is not known where the non-resident lives, the trustees are required, before the end of the year, to make a return to the clerk of the municipality of the lands of non-residents, with a statement of the uncollected taxes due on them. The township council is then required, (after the beginning of the next year), to pay these taxes to the trustees out of the general funds of the municipality. In case of refusal to do so, the township council can be sued for the amount.

NOTE.—The true and effectual remedy for the inconvenience arising out of the "non-resident" relation which a school section system entails, (with its law of restricted boundaries), is the adoption of a Township Board system, as provided by law. Where this system has been adopted, the ratepayers have (so far as we know) never reverted back to the narrower school section system, with its inconvenience and greater expense.

#### 10.—Decisions of the Superior Courts in regard to non-resident's taxes.

(1.) *Mode of collecting School Rates from Residents and non-Residents*.—The Court of Queen's Bench has decided that trustees are bound to collect by warrant from the residents of the school section; and to sue for and recover by their name of office from persons residing without the limits of the section and making default of payment.—*Chief Superintendent of Education, appellant, in re Trustees, a Moore v. Wm. McRae*. 12 Q. B. R. 525. (See note to next clause.)

(2.) *Trustees' Warrant to collect School Rates only legal within their own Section. They must sue non-residents*.—The Court of Queen's Bench has also decided that school trustees can only issue a warrant to collect school rates within the limits of the section for which they are appointed.—*Gillies v. Wood, No. 6, Pilkington*. 13 Q. B. R. 357.

NOTE.—This decision was virtually confirmed in 1870 by the Court of Common Pleas in the case of *Chief Superintendent in re Chapman v. Thrasher et al.* (20 C. P. R. 259), with the addition of one of defining that a collector's municipality was a school section beyond which his jurisdiction did not extend. The School Act of 1871, however, declares that a school collector "shall have the same power and proceed in the same manner in his school section and township, as a township collector, in collecting rates in a township or county."

(3.) *Return of uncollected non-resident rates of past years may be made by Trustees*. Such rates are payable immediately out of the general funds of the township.—The Court of Common Pleas has decided that, by the School Law, it is made the duty of the local municipality to make up and supply any deficiency arising to the school fund which arises from the inability of the collector of school rates to collect the same by reason of their being no resident on such land, or no goods and chattels thereon which can be distrained; and that the legislature intended that such deficiency should be made up out of the general funds of the municipality, immediately after the return made to the clerk of the municipality of

what school rates are so in arrear. It was also held that trustees may, before the end of each current year, return all school rates upon lands not collected for the reasons stated in the Act, and of which no prior return has been made to the clerk of the municipality.—*School Trustees No. 1, Arthur v. Township Council of Arthur and Luther*. 9 C. P. R. 532.

(4.) *Mandamus not granted when other remedy can be had.*—The Court of Common Pleas has decided that, as a general rule, a mandamus will not be granted unless the party making the application has no other specific legal remedy [i.e., by suit (as in the case under review) of the trustees to recover imposed school rates on lands of non-residents]. Upon an application by school trustees for a mandamus to obtain money from a municipal corporation, the affidavits being contradictory, and this court having decided in the case of *School Trustees of Arthur v. the Municipality of Arthur*, 9 C. P. R. 532 [quoted above], that an action for a balance due in a case such as this would lie, the mandamus was refused.—*School Trustees No. 7, Elzevir v. The Municipality of Elzevir*. 12 C. P. R. 548.

NOTE.—In case of refusal on the part of the township council to pay the amount of these uncollected rates, duly returned to its clerk before the end of the year in which the rate was levied, the trustees can at once enter an action against the township council for such amount.

(5.) *Executors, equally with the Testators, liable for School Rate on Non-Resident's Land.*—The Court of Common Pleas has decided that a resolution of the freeholders and householders of a school section to pay the teacher's salary and the expenses of the school, followed by a resolution of the trustees, directing a rate to be levied on the rateable property of such section, to raise the sum required, and the preparation of a rate bill and warrant, are sufficient to render a non-resident, having real estate within the section, liable for the sum rated by the trustees, according to the assessed value of his real property; and that, being so liable, an executor representing the estate is liable in an action of the same nature to which the testator might have been subjected.—*Trustees No. 2, Durwich v. McBeath*. 4 C. P. R. 228. (See clauses (12) and (13) of section 11, chapter III.)

## CHAPTER V.

### SCHOOL SECTION AUDITORS—ACCOUNTABILITY OF TRUSTEES AND OTHERS.

#### 1.—When, and by whom are School Auditors Appointed.

The law requires the trustees of each section to appoint "a fit and proper person" to be auditor of their school accounts *before the first of December* in each year. In case of their neglect to do so, or in case the one appointed refuses to act, the Inspector shall appoint one for them. The ratepayers are also required, *at each annual meeting*, to appoint another auditor, so that either auditor, or the two together may audit the trustees' accounts.

#### 2.—Auditors' time of meeting, and object of it.

The auditors chosen, or either of them, shall, "before the day of the next annual meeting" appoint a time for examining the accounts of the school section and apprise the trustees of the fact.

### 3.—The object of the School Section Audit

Is, "to examine into and decide upon the accuracy of the accounts of the section, and whether the trustees have truly accounted for, and expended for school purposes, the moneys received by them."

### 4.—Duration of the Time of Audit.

In case of delay in completing the audit, even beyond the year of appointment, the law declares that "the auditors shall remain in office *until their audit is completed.*"

### 5.—When and to whom is the Auditors' Report to be presented.

The auditors are required to submit the school accounts of the section, "with a full report thereon, to the annual school meeting, next after their appointment." They are further required to report at the same time "the result of their examination of the accounts of the year," and, with the trustees, to sign the trustees' annual report for presentation to the meeting. (See section 3, above.)

### 6.—What the School Auditors have authority to do.

The school auditors can require the attendance of all, or any of the parties interested "in the audit, and of their witnesses, with such books, papers, and writings as such auditors, or either of them, may require them, or either of them, to produce; and the auditors may administer oaths to such parties or witnesses." They have also full power to enforce their decisions, in case of refusal to comply with them.

### 7.—Obligation on Trustees, their Secretaries, and others, to give Evidence and furnish Information.

The law declares that, "if the trustees, or their secretary, in their behalf, refuse to furnish the auditors, or either of them, with the papers or information in their power, and which may be required of them, relative to their school accounts, the party refusing shall be guilty of a misdemeanour, and upon prosecution (before a magistrate) by either of the auditors, or any ratepayer, be punished by fine or imprisonment," "for any time not exceeding thirty days, unless the fine and costs, and the reasonable expenses of endeavouring to collect the same be sooner paid."

### 8.—Further Obligations on Trustees and other Parties to the Audit.

The School Act of 1871 also declares, that in case a "school trustee or other person, into whose hands any school moneys or school property shall come, who neglects or refuses to account for or deliver up the same, when called upon by competent authority to do so, the County Judge shall make an order requiring such trustee or person

to appear before him. The judge, if he thinks the complaint against the party well founded, shall order the party complained of to deliver up, account for, and pay over, the books, papers, chattels, or moneys applied for, by a certain day, with reasonable costs, on pain of imprisonment by the sheriff, without bail.

### 9.—Responsibility of Trustees and others for Lost School Moneys.

If it can be proved at the audit, or at any other time, that "any part of the public school money be embezzled or lost, through the dishonesty or faithlessness of the party to whom it has been entrusted, and proper security against such loss not having been taken, the person whose duty it was to have exacted such security, shall be *personally responsible* for the sums so embezzled or lost; and the same may be recovered from him by the party entitled to receive the same, by action at law in any court having jurisdiction to the amount, or by information at the suit of the Crown."

### 10.—Question as to the "Lawfulness" or Expediency of Trustees' Expenditure.

The auditors can only decide upon the *lawfulness*, and not upon the expediency, of an expenditure. The trustees are the sole judges of the *expediency* of any expenditure. It is only on matters of difference between the auditors themselves as to the *lawfulness* of any expenditure, (that is, whether the expenditure is authorized by the School Law, or comes fairly within the objects of the trust), that it is necessary to submit the matter for the decision of the school meeting, and finally to the inspector. (See next section.)

### 11.—What are Lawful School Section Expenditures?

The "expenditure" of a school may be "for any lawful purpose whatsoever," and may therefore include collector's fees, law costs incurred in maintaining or defending necessary or *successful* suits, postages, or any incidentals connected with the office of trustees. While trustees carry out the lawful decision of their constituents, neither the auditors nor any public meeting can limit, or deprive them of the authority conferred upon them by the Act," as to whatever they may judge expedient with regard to the building, repairing, renting, warming, furnishing, and keeping in order the section school house, and its furniture and appendages, and the school lands and enclosures held by them; and procuring apparatus, library, prize, and text books for their schools, &c," as mentioned in section 15 of chapter II. (See also sections 6 and 7 of chapter III.)

### 12.—Summary in regard to Audit of School Section Accounts.

The law requires trustees, their secretary-treasurer and all other parties concerned, to furnish the school section auditors with all vouchers for the payment of school money during the year, together



with such contracts, agreements, papers, books, &c., and verbal information, under oath, if necessary, on the subject of the receipts and expenditure as may serve to explain the items in the accounts. In case of difference of opinion between the auditors on any matter in the accounts, it shall be referred to and decided by the county inspector.'

### 13.—Summary of Duties of Trustees.

The duties which trustees are required to perform, may be summarized as follows:—

(1.) To call the annual school meeting, and also a special one in case of any difference in regard to the school-site, death or removal of trustees, &c.

(2.) To prosecute all illegal voters at school meetings.

(3.) To make a verbal declaration of office within *two weeks* after notice or knowledge of election as trustee.

(4.) To see that their school is furnished with a trustees' book, a visitor's book, a teacher's register, and a *Journal of Education*. These two latter are furnished without cost. The two former must be purchased at the expense of the section.

(5.) To employ, and pay school moneys to none but legally qualified teachers.

(6.) To fix no rate-bill upon persons sending children to school for any purpose.

(7.) To permit all pupils between the age of five and twenty-one years, on whose behalf school-rates are paid, and who observe the rules, to attend their school.

(8.) To visit the school and see that it is properly conducted; that no unauthorized books are used; that all the pupils are properly supplied with proper text-books.

(9.) To exercise all the corporate powers vested in them, for the fulfilment of all agreements, contracts, &c.; and to maintain a school in their section during the year.

(10.) To transmit their *half-yearly* returns and their *yearly* reports to the Inspector, and also to submit their *yearly* report to the annual meeting of their constituents.

(11.) To affix their corporate seal to all contracts, agreements, deeds, &c., under their hand.

(12.) To appoint and take proper security from the secretary-treasurer and school collector.

(13.) To make a return to the municipal clerk of all rates imposed by them.

(14.) To make no contract with any member of the school corporation, except for school site, or as collector.

(15.) To transact no school business except at a trustee meeting of which each member of the corporation has had due notice.

(16.) To appoint a school auditor before the 1st of December in each year, and lay before the auditors all necessary information.

(17.) To comply with the award of the arbitrators arising between themselves and other parties, under the school law.

(18.) To call school meetings when desired by the ratepayers to decide the question of school site.

(19.) To provide, at the expense of the section, for the cleaning of the school-house and the lighting of fires, &c.

(20.) To provide a well, play yard and separate conveniences for boys and girls.

(21.) To see that the prescribed programme is fully carried out.

(22.) To provide an assistant for their school, in case the average attendance of pupils exceeds fifty.

(23.) To provide suitable school accommodation for all the pupils in their section, as defined in the regulations.

(24.) To establish a free public school library as required by law, to see that it is available to the inhabitants, and that it is properly managed.

(25.) To follow the township assessor's roll in making out the list of, and collecting, the school rate.

(26.) To take possession and have sole custody of all common school property, moveable property, moneys, &c.

(27.) To obtain a legal title to their school premises, as provided by law.

(28.) To do whatever they may judge expedient in regard to the building, fitting, &c., of the school-house, appendages, play-ground, enclosures, lands, and moveable property.

(29.) To have the sole authority to appoint by written agreement, and fix the amount of the salary of all male and female teachers employed by them.

(30.) To appoint a school collector, secretary-treasurer, &c.

(31.) To establish, if they judge expedient (with the consent of the inspector), a male and female school in their section.

(32.) To provide a teacher's residence.

(33.) To raise all moneys, in the manner authorized by the school meeting. No meeting can lawfully decide what *amount* the trustees shall raise, but only the *manner* in which they shall do it. Should a meeting neglect or refuse to decide upon the *manner* of raising the sums required, the trustees can exercise their own discretion as to which mode they will adopt.

(34.) To apply, if they judge expedient, to the municipality of their township, once a year, before the August meeting (except in case of a site and building), to raise any school-rate authorized by the inhabitants; and to compel the council to collect it, by *mandamus* from one of the Superior Courts, should the council refuse to do so.

(35.) To exempt at their pleasure all indigent persons from section school rates, and provide their children with text books.

(36.) To sue non-residents for school rates. School taxes on absentees must, however, be collected as pointed out in section 9,

chapter IV. In case the township council should refuse to pay these taxes (duly returned to the clerk,) the trustees can enter an action, in any competent court, against the township council for the amount.

(37.) To call a special school meeting for any lawful school purpose.

(38.) To unite their school with the adjacent High School (if desirable.)

(39.) To resign the office of trustee (if necessary,) with the consent in writing of their colleagues and of the Inspector.

(40.) To decline re-election if they see fit for *four* years next after going out of office.

(41.) To apply to county council against any objectionable act or by-law of a township council in altering the boundaries of the school, or to request an adjustment of their school section boundaries.

(42.) To comply with the school law and regulations generally.

N.B.—No school meeting of their constituents can deprive trustees of any of these powers, or prevent their exercise.

## CHAPTER VI.

### PUBLIC SCHOOL MEETINGS.

#### 1.—Day of Annual School Meeting fixed by Law.

The day fixed by Statute for the annual school meetings throughout the province is the second Wednesday of January, and the hour at ten o'clock in the forenoon. The proceedings cannot close before eleven o'clock, nor be kept open after four o'clock, P.M., of that day. They cannot stand over to the following day nor be adjourned, nor fail, should only two electors and two trustees be present. (See next section.)

#### 2.—Public Notice of Meeting must be given by Trustees.

Three public notices, to be posted in as many conspicuous places in the school section, should be issued at least six clear days before the day of meeting, and signed by the secretary (by direction of the trustees), or by a majority of the Trustees themselves. The corporate seal need not be attached to them. These notices should state the *time, place* of meeting, and all the business to be brought forward. Should the meeting fail to be held for want of notice, or other cause, any two rate-payers, or the inspector, may call a school meeting within twenty days after the second Wednesday of January.

### 3.—Who are, and who are not, School Electors of a Section.

Every school rate-payer of the section, whether resident or non-resident, female, or minor, who has paid a county, township, or section school tax, during the year, and who is not a supporter of a separate school, has a right to be present and vote at a school meeting.

### 4.—Declaration of School Section Elector's Right to Vote.

In case any one objects to an elector's right to vote, the chairman should require the elector to make a declaration of that right in the following form (on doing so his vote must be received without further question):—

"I do declare and affirm that I have been rated on the assessment roll of this school section as a freeholder (or householder, *as the case may be*), and that I have paid a public school tax due by me in this school section, imposed within the last *twelve* months, and that I am legally qualified to vote at this meeting."

### 5.—Appointment of a Chairman and Secretary of the School Meeting.

The first thing to be done, before proceeding to other business, is the appointment of a Chairman and Secretary. The chairman may be an elector or non-elect, at the pleasure of the meeting (if a non-elect he cannot vote). The secretary may be the teacher of the section, or any other competent person.

### 6.—Duties of the Chairman of a School Meeting.

- (1.) To keep order.
- (2.) To decide all questions of order, subject to an appeal to the meeting.
- (3.) To give a casting vote (but no other) if an elector.
- (4.) To take the votes on any question before the meeting, in any manner desired by two electors present. (See section 14 of this chapter).
- (5.) To hear the verbal declaration of office made (in the words of the statute) by the trustee elect.
- (6.) To transmit to the inspector a copy of the proceedings of the meeting, signed by himself and the secretary, under a penalty of five dollars for neglecting to do so.

### 7.—Duties of the Secretary of a School Meeting.

- (1.) To make a correct minute of the proceedings.
- (2.) To sign the minutes for transmission to the Inspector.
- (3.) To hear the declaration of office made by the chairman, in case he should be elected trustee.

### 8.—Prescribed Order of Business at a School Meeting.

The following is the order in which the business of an annual school meeting should be taken up :—

- (1.) Calling the meeting to order by the senior trustee.
- (2.) Election of chairman and secretary.
- (3.) Reading of trustees' annual report and auditors' statement of receipts and expenditure.
- (4.) Reception of trustees' report and auditors' statement.
- (5.) Election of trustee to fill the vacancy of the year.
- (6.) Election of trustee or trustees to fill any other vacancy.
- (7.) Election of a school auditor for the next year.
- (8.) Deciding by whom the school expenses of the school shall be raised, (that is by the trustees, or by the township council.)

**NOTE.**—The school meeting has no power to alter the trustees' estimate of these expenses, nor to interfere with the appointment of the teacher, or to reduce his salary. These expenses, which cannot be reduced by the meeting, include the items of rent, insurance, repairs, fittings, printing; salary of teacher; maps, apparatus, tablets, library, prize and text books; fuel, cleaning, lighting fires, care of premises; postage, stationery; collector's fees; cost of site, building, teacher's residence, outbuildings, shed, fence; planting and laying out grounds; school bell and all other necessary expenses incurred by trustees in maintaining the school.

- (9.) Any other business, of which due notice has been given.

**NOTE.**—No business can be lawfully transacted at a school meeting, unless due notice shall have been given of it by the trustees, inspector, &c., beforehand.

### 9.—Rules to be observed at each School Meeting.

The following rules are to be observed at each school meeting, (see also section 10 of this chapter), viz :

(1.) *Poll demanded.*—The name of those who vote for, and of those who vote against, a motion, shall be entered upon the minutes, if two electors require it, at the time of voting, and even after the chairman has declared the motion carried. (See section 14, below.)

(2.) *Votes.*—All votes shall be taken in the manner desired by a majority of electors present, and a poll shall be granted if two electors desire it. Every vote tendered shall be received by the chairman, unless objection be made to it. In that case the chairman shall require the person, whose vote is questioned, to make the declaration provided by law. After making it, the vote must be received and recorded without further question.

(3.) *Protest.*—No protest against an election, or other proceedings of the school meeting shall be received by the chairman. All protests must be sent to the Inspector, at least within twenty days after the meeting.

(4.) *Adjournment.*—A motion to adjourn an annual school meeting until the business is finished is unlawful; but a motion to adjourn a special school meeting shall always be in order; provided that no



second motion to the same effect shall be made until after some intermediate proceedings shall have been had; or provided that such special meeting has not been called for the selection of a school site. (See section 3 of chapter VII.)

(5.) *Reconsidering Motion.*—A motion to reconsider a vote may be made by any elector at the same meeting; but no vote of reconsideration shall be taken more than once on the same question at the same meeting, unless by unanimous consent.

(6.) *Close of the Meeting.*—The school meeting must not close before eleven o'clock in the forenoon, nor shall it continue open after four o'clock in the afternoon—beyond which latter hour no business can be lawfully transacted by the meeting.

(7.) *Transmitting Minutes to Inspector.*—At the close of the meeting, the chairman should sign the minutes as entered by the secretary in the minute book. Within fourteen days after the meeting, the chairman must send to the inspector a copy of the minutes (as signed by himself and the secretary), under a penalty of five dollars.

(8.) *Declaration of Office.*—The trustee, or trustees-elect, should at once make the declaration of office before the chairman of the meeting, or within fourteen days after the close of the meeting. In case the chairman is elected trustee, he should in like manner make the declaration of office before the secretary.

NOTE.—In no case is an oath of office, or signed declaration by the trustee-elect required. The act must be verbally performed. Even if it be not performed, the trustee is nevertheless a legal trustee until fined by a magistrate for neglect to make the declaration. On being fined, the office is vacated, and a new election should be at once held. Even should a trustee's election be appealed against to the inspector, the trustee himself must hold office and act, until his election is legally set aside. The principle is, that an individual coming into office by colour of an election or appointment, is an officer *de facto* (in fact), and his acts, in relation to the public, are valid until he is lawfully removed, although it be conceded that his election or appointment was illegal in the first place. When his election is confirmed, he becomes a trustee *de jure* (of right), and no further objection can be made to him.

## 10.—Optional Rules.

NOTE.—The following are rules of order suggested, which may or may not be observed, at the pleasure of the meeting, viz :

(1.) *Addressing Chairman.*—Every elector, previous to speaking, should rise and address himself to the chairman.

(2.) *Order of Speaking.*—When two or more electors rise at once, the chairman shall name the elector who shall speak first, when the other elector, or electors, shall next have the right to address the meeting in the order named by the chairman.

(3.) *Motion to be read.*—Each elector may require the question or motion under discussion to be read for his information at any time, but not so as to interrupt an elector who may be speaking.

(4.) *Speaking twice.*—No elector shall speak more than twice on the same question or amendment without leave of the meeting, except in explanation of something which may have been misunderstood, or until every elector choosing to speak shall have spoken.

(5.) *Motions to be seconded.*—A motion cannot be put from the chair, or debated, unless the same be in writing (if required by the chairman), and seconded.

(6.) *Withdrawal of Motion.*—After a motion has been announced, or read by the chairman, it shall be deemed to be in the possession of the meeting; but it may be withdrawn at any time before decision, with the consent of the meeting.

(6.) *Kinds of Motions to be received.*—When a motion is under debate, no other motion shall be received, unless to amend it, or to postpone it, or for adjournment, if a special meeting, as provided in clause (4), section 9 of this chapter.

(8.) *Order of putting Motion.*—All questions shall be put in the order in which they are moved. Amendments shall always be put before the main motion: the last amendment first, and so on.

### 11.—First Business of the Annual School Meeting.

After appointing a chairman and secretary, the first business, before electing a new trustee, is the reading of the school trustee and auditors' report for the past year for the information of the meeting. (For other items of business to be brought forward, see section 8 of this chapter.)

### 12.—What the Trustees and Auditors' Report shall contain.

The law of 1871 declares that "the report of the trustees required by law to be laid before the annual school meeting shall (1) include a summary of their proceedings; and (2) state of the school during the year, together with (3) a detailed statement of receipts and expenditure, signed by either or both of the school auditors of the section; and in case of a difference of opinion between the auditors on any matter in the accounts, it shall be referred to and decided by the County Inspector.

### 13.—Who may or may not be a Trustee.

Any fit and proper person who is a resident assessed rate-payer of the school section, may be trustee thereof; but no inspector, teacher, non-resident, or supporter of a separate school can lawfully hold that office. The chairman of the meeting (if a ratepayer, and otherwise eligible), may be elected. In that case he should make a verbal declaration of office before the secretary of the meeting. Should a person elected as trustee refuse to serve, he subjects himself to a penalty of five dollars; but a retiring trustee need not serve for four years after his term of service expires. (See chapter I., sections 1 and 2.)

### 14.—Three Modes of Trustee Election prescribed.

In electing a trustee, one of the three modes authorised by law may be adopted, viz.: (1) by acclamation; (2) by a show of hands; and (3) by polling the votes. The law requires the chairman to adopt the latter mode at the request of any two electors present, even although he may, on a show of hands, have declared the person elected.

### 15.—Complaints to be made to Inspector.

Any person having a legal objection, either to the proceedings of the annual meeting, or to the election of the trustee, has a right of appeal against either, within twenty days, to the inspector alone. The inspector is required by law to receive and to investigate the complaint, and either confirm the proceedings and election, or set them aside within a reasonable time.

### 16.—Appeal to the Chief Superintendent against Inspector's Decision.

Should any rate-payer object to the Inspector's decision, no further proceedings should take place in the matter until an appeal is made to the head of the Education Department (as provided by law in such cases) and decided.

**NOTE.**—Should the proceedings and election be set aside, and no appeal be made to the chief superintendent, the inspector, or trustees, if desired, should call another meeting for a new election. If no complaint be made to the inspector in writing within twenty days after the meeting, the proceedings (however irregular they may have been) must be held to be valid and binding upon all parties concerned. It should be borne in mind that the complaint (if made at all) must be referred, in the first place to the inspector having jurisdiction, and not to the chief superintendent. The law provides for an appeal from the decision of the inspector in such cases to the chief superintendent. In no case should the complaint in the first instance be made to the Education Department; and, in all cases, parties appealing must send the inspector a copy of their appeal, so that he may have an opportunity to send such explanations as he may deem necessary to that Department.

### 17.—Mode of Calling Special School Meetings.

The notice calling a special school meeting, should specify the place, time and objects of the meeting. It may be issued by the secretary, or trustees, or by the Inspector. Three notices of the meeting should be put up in conspicuous places in the section, at least six days before the meeting. (See section 2 of this chapter.)

### 18.—What an Ordinary Special School Meeting can do.

A special if called to transact ordinary business can

(1.) *Discuss*, and decide at its pleasure, the business named in the notices calling it; or, it may, (unless restricted as below.)

(2.) *Adjourn* the further consideration of such business until another meeting.

(3.) *Rescind* (unless restricted, as below) the resolutions of a former meeting, and pass others in their place.

### 19.—What a School Section Meeting Cannot do.

A school meeting cannot lawfully:

(1.) *Elections.*—Rescind any resolution or vote of a former meeting for the election of a school trustee.

(2.) *Contract.*—Rescind any resolution of a former meeting, if in the meantime a contract, agreement, or obligation has been entered

into under its authority, unless at the same time it fully provides for the payment of compensation or damages caused by the rescinding of such resolution or vote.

(3.) *Adjourn.*—The annual meeting, or any meeting called for the appointment by it and by the trustees of arbitrators, to decide upon a school site. (See next chapter, section 4.)

(4.) *Award.*—Set aside or ignore the award of arbitrators appointed to select a school site.

(5.) *Rate bill.*—Impose rate bill for fees, fuel, or other purpose, upon residents, or non-residents. (See chapter IV. on non-residents.)

(6.) *Trustees' Rights.*—Interfere with the trustees in their right to employ a teacher, erect a school-house, or decide upon the expenses of the school, or the improvement of the school premises.

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## CHAPTER VII.

### SELECTION OF RURAL SCHOOL SITES.

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#### 1.—When a School Site requires to be chosen.

There are three cases in which the question of School Site comes up for consideration in a school section: (1.) On the establishment of a new section; (2.) On the change of site in an old section; and (3.) On the enlargement of an existing site.

#### 2.—Joint action of Trustees and Ratepayers in the choice of a Site.

Of the three cases relating to the choice of school sites which we have mentioned, the first and second only require the joint action of the trustees and ratepayers; the third is within the province of the trustee alone to determine.

#### 3.—Meetings required for Procuring or Changing a School Site—When it cannot adjourn without action.

The necessity for joint action is clearly obvious, even without an expression of opinion, when a new school section first goes into operation. It is, however, frequently difficult to determine whether the state of feeling in regard to a change of site in an old section is sufficiently decided to warrant the trustees in calling a meeting to discuss the question. However, if they know that such a feeling exists, the law requires them, within a reasonable time, to call a "special meeting" to "consider" the question. If, at this meeting, "a difference of opinion as to the site of the school" is found to exist,

"between the majority of the trustees and a majority of the rate-payers," the law *requires* that each party *shall* at once choose an arbitrator. It is, therefore, not competent for this special meeting to adjourn, until either the majority of the trustees and the rate-payers agree as to a site, or, (in case of a difference of opinion on the subject,) they respectively appoint an arbitrator to select one for them. (See next section, and section 8 of this chapter.)

#### 4.—Remedy in case of failure to call a Meeting, or to appoint an Arbitrator.

In case the trustees refuse to call a "special meeting," as required by law, for "procuring" or "changing" a site, the inspector is authorized to do so; or, if "at such special meeting" a difference of opinion should arise in regard to a site between the trustees and ratepayers, and the chairman or a majority of the ratepayers by vote should unlawfully "adjourn the meeting," and thus neglect or refuse to appoint an arbitrator," the law declares that then "it shall be competent for the county inspector, with the arbitrator appointed, to meet and determine the matter; and the inspector, in case of such refusal and neglect, shall have a second or casting vote, provided" he and the one arbitrator appointed "should not agree."

#### 5.—Remedy in case one of the Arbitrators should refuse to act.

Should two arbitrators be appointed at the school meeting to select a site, and should either of them (having received notice) neglect or refuse to attend a meeting of the arbitrators, on the subject, the law declares that "it shall be competent for the arbitrators present to make and publish an award upon the matter submitted to them, or to adjourn the meeting for any period not exceeding ten days, and give the absent arbitrator notice of such adjournment."

#### 6.—Power of the Arbitrators—Kind of Site to be chosen.

The law [says,] that "in case of a difference as to the site," the arbitrators appointed "shall finally decide the matter." The choice of the arbitrators as to a site is thus left free. They are not bound to select either, or any of the sites in dispute, but should choose one best adapted to the wants of the section. It should be an acre in size, (but cannot be less than half an acre), in a pleasant situation, and, (without the consent of the owner), should not be within a hundred yards of his house, orchard, pleasure-ground, or dwelling-house. Arbitrators are "entitled to the same remuneration *per diem* for the time employed" as are county councillors; "and the parties concerned shall pay all the expenses of the arbitration," according to the award of the arbitrators.



### 7.—Making and Publishing an Award—They may be by Deed or Parol.

When the arbitrators have agreed upon their award, they should reduce it to writing, sign and seal it. This is "making" the award. When thus made, it should be sent to the trustees, for their information and that of the ratepayers. This is "publishing" it. It is competent, however, for the arbitrators to declare or publish the award orally, in presence of the parties concerned, viz., a public meeting of the trustees and ratepayers. Should the award thus published be afterwards, by consent, reduced to writing, (as above) it should be identical in its terms with the oral declaration made, and should be merely a written copy of it. Any material variation in the written copy from the oral award would destroy its validity and finality. (See *Davis v. McGivern*. 11 Q. B. R. 112.)

### 8.—Summary of General Rules in regard to Arbitration.

(1.) *Constitution of the Arbitration Court.*—Any one who can contract, can submit matters in dispute to arbitration. Either a friend or enemy, or a person having an interest in the cause, may be chosen. All the arbitrators should be chosen before proceeding to the arbitration, except where otherwise provided (as in the case of a school site.) Where there are an odd number of arbitrators, a majority decides all matters submitted to them; but, where the number is two, four, &c., who are equally divided in their opinions, any person who may be selected as umpire has the sole right to determine the points of difference, and make the award. The inspector is, *ex officio*, umpire in cases where only two arbitrators are present.

(2.) *Duties of Arbitrators.*—It is the duty of arbitrators to hear evidence on both sides. If parties to the arbitration, and their witnesses, who are duly notified, do not attend, the arbitrators can proceed, *ex parte*, and decide according to the best evidence before them. An arbitrator cannot delegate his power; but, if he obtains the opinion of professional men, he may adopt it as his own. He may, however, delegate, purely ministerial acts, such as to go from one place to another, to obtain certain definite information, or estimate the value of some specific work performed; but he cannot direct any person to commit a trespass.

(3.) *Time of making an Award.*—If no time be fixed, an award should be made and published within three months from the time of the submission. The time for making an award may, however, be enlarged. If time lapses, the power of the arbitrators is gone until it is enlarged.

(4.) *Making and Publishing an Award.*—All awards should be in writing, but may be made and published orally. An award is made when all the arbitrators have signed it. When signed by the arbitrators, their power is gone. An award is published when it is sent to the parties concerned, or notice is sent to the parties affected by it that it is ready to be delivered. It should be delivered on the day fixed, and then the fees and other expenses on it are payable. Any kind of words may be used in an award; but it should be definite and conclusive on all the points submitted. Arbitrators are not required to give reasons for their award.

(5.) *Judgment and Experience.*—In *Martin v. Kegan*, (2 Prac. R., 370), it was held that the parties to an arbitration "have a right to the arguments, experience, and judgment of each arbitrator, at every stage of the proceedings."

(6.) *Costs of Arbitration.*—Where the costs of the arbitration are at the discretion of the arbitrators, and the award says nothing about them, each party pays his own costs of reference, and the costs of the award are to be borne equally.—*Glen v. Grand Trunk Railway*, 2 Prac. R. 377.

### 9.—Power of, and Restriction on, School Meetings in regard to "Awards."

Even after an arbitrator or arbitrators have been appointed to select a site, it is competent for a majority of the trustees and of a public school meeting called for that purpose to agree upon the choice of a site before an award is made. This agreement revokes the submission of the matter to arbitrators, who should at once be notified of the fact, so that no award may be "made." If, however, an award be made and published, it is not competent for the trustees, or a public meeting, to set it aside, either by choosing a site themselves, or by appointing other arbitrators to select one.

### 10.—Powers of the Trustees in regard to enlarging a School Site.

Where no desire is felt by the trustees or ratepayers to change the site of a section, the trustees have full power to enlarge it at their discretion, and to erect a new school house on it, or to repair the old one, without consulting their constituents.

### 11.—Sale or Exchange of the old School Site.

In case a new school site is chosen in a school section, and the old one is no longer required, the trustees are authorised "to dispose, by sale or otherwise, of any school site or school property not required by them, and to convey the same under their corporate seal, and to apply the proceeds thereof for their lawful school purposes. And all sites and other property given or acquired, or which may be given or acquired, for common school purposes, shall vest absolutely in the trustee corporation for this purpose."

NOTE.—This case differs materially from one in which a change of boundaries necessitates a change of site. Under such circumstances the law declares that, "In case a school site or school house, or other school property *be no longer required* in consequence of the alteration or the union of school sections, the same shall be disposed of by sale or otherwise, in such manner as a majority of the rate-payers in the altered or united school sections decide at a public meeting called for that purpose. And the inhabitants transferred from one school section to another, shall be entitled, for the public school purposes of the section to which they are attached, to such a proportion of the proceeds of the sale of such school house or other public school property, as the assessed value of their property bears to that of the other inhabitants of the school section from which they have been so separated; and the residue of such proceeds shall be applied to the erection of a new school house, or to other public school purposes of such altered or united sections."

### 12.—Owner of Land must Sell School Sites selected.

If the owner of a newly selected school site, or of land adjoining an old site (which the trustees have decided to enlarge) should refuse to sell it, or should ask an unreasonable price for it, the law requires the trustees and owner each to appoint an arbitrator to appraise the damages, to the owner, of such compulsory sale. Upon the tender of payment of these damages to the owner of the land by the trustees, they can take possession of the land for school purposes, and proceed to erect a school-house on it, or to enclose it.

### 13.—Power and Privileges of the Owner only relate to a new Site.

On the selection of a person's land (without his knowledge or consent), within one hundred yards of his garden, orchard, pleasure-ground, or dwelling-house, the owner may either consent to the sale of the new school site at a reasonable rate, or he may refuse to sell it, at his pleasure. But, in regard to the *enlargement* of the old school site, the law gives the owner of the adjacent land no such privilege, and the trustees should offer to buy the additional land. In case of refusal to sell it, the law requires the trustees and owner, each, to appoint an arbitrator, to appraise the damages, and upon tender by the trustees (as above) of the amount of damages awarded, the trustees can take and use the land for the purposes of their trust.

NOTE.—The provisions of the law on the compulsory sale of school sites are twofold, although they have been frequently confounded together. The first part of the section on the subject refers (1st.) to "the selection of land for a *school site*," and (2nd.) to "the selection of land for *enlarging school premises*." In these two cases, the trustees can demand an arbitration should the owner of the selected or enlarged site refuse to sell, or ask too large a price for the land. In the first class of cases, (*i.e.*, the selection of a *new site*), the owner can lawfully refuse to sell, or to submit to arbitration, when the selected is within 100 yards of his "orchard, garden, pleasure-ground or dwelling-house;" but where the trustees merely wish to enlarge their existing school premises, the owner has no such right. The provision of the law, giving this right, limits it to the "*selection of a site*" and not to the *enlargement* of the school premises. Two things are provided for in the Act, while the right reserved to the owner of the land refers only to one of them—that is to the case of the selection of a *new site*, and not to the *enlargement* of the old one. The provision of the law does not in any case (as has been supposed) apply to persons whose house, orchard, &c., may happen to be within 100 yards of the proposed site, but who are not in any way concerned in the sale of land for the site.

### 14.—Township Council may purchase School Sites.

The Municipal Institutions Act authorizes township councils to pass by-laws "for obtaining such real property as may be required for the erection of public school-houses thereon, and for other public school purposes, and for the disposal thereof when no longer required; and for providing for the establishment and support of public schools according to law."

### 15.—Decisions of the Court in regard to School Sites.

(1.) *In selecting a Site, Trustees cannot act without consulting their constituents.*—The Court of Queen's Bench has decided that the trustees cannot, without reference to the [assessed] freeholders and householders of the section, determine upon a site for the school-house, and impose a rate to meet the expense of its purchase.—*Orr v. Ranney et al*, No. 15 Westminster. 12 Q. B. R. 377.

(2.) *Arbitration before award made, may be superseded by mutual concurrence.*—Chief Justice Robinson thus laid down the law on this subject:—As a general rule, we take it that where two parties have a difference upon any matter of business, and refer it to arbitration, they may afterwards agree upon the matter on which they had differed, and so may render it unnecessary that any award should be made. By the common law either party might, before the award made, revoke

the submission.—There have been restrictions lately placed by statute upon this right of one party to revoke without the concurrence of the other, but it would be most unreasonable and inconvenient to hold that both the parties may not come to a settlement of their dispute, and so dispense with the necessity for the arbitrators proceeding.—*Chief Justice Robinson, in re Vance v. King, et al, No. 1 Hollowell.* 21 Q. B. R. 187.

(3.) *First arbitration in regard to a School Site, cannot be set aside by a subsequent Special Meeting.*—The Court of Common Pleas has decided the following case: When a meeting was held to change the site of a school-house, and arbitrators appointed, who met and decided the question, but their decision was not acted upon; subsequently another meeting was called, and their decision and proceedings were acted upon and the site changed. *Held*, that the proceedings were irregular, and that the trustees had no authority to change the site of the school-house without the sanction of a special meeting of the [assessed] freeholders and householders, and that the second meeting had no authority to alter the determinations previously made.—*Williams v. Trustees, No. 8 Plympton.* 7 C. P. R. 559.

(4.) *Replevin—Arbitration in regard to school site—Blanks filled in after execution.—Award rendered invalid thereby.*—The Court of Common Pleas decided the following case: *Replevin*\*—Two defendants avowed [*i. e.* maintained and justified the act done by them]; the third pleaded the convening of a special meeting of freeholders and householders of a certain school section to procure a school site, when it was agreed to procure a certain piece of ground and erect a school-house thereon, which was done. That plaintiff was a resident freeholder when the meeting was held and when his goods were seized, and was assessed \$80 for building said school-house, &c. The plaintiff pleaded that the meeting above set forth was null and void, because before the said meeting another had been convened according to law, when a difference of opinion existed between a majority of the freeholders and householders as to choosing a school site, and arbitrators were appointed, who decided upon a certain site, which decision remains in force, and the defendants in contravention thereof wrongfully purchased the site mentioned in their plea, and wrongfully distrained, &c. Upon demurrer, *Held*, that the second meeting pleaded by the defendant was a violation of the provisions of the statute, and that the plaintiff was entitled to judgment. The arbitrators to whom a reference in this cause was made under the school act executed an award, the description of the lot not being fully inserted, but a blank being left therefor, which was afterwards filled in and the word lot altered into gore. *Held*, that the award was insufficient. *Held*, also, that school trustees who executed a warrant as such trustees under the seal of the trustee corporation were not personally responsible.—*Ryland v. King et al, No. 1, Hollowell.* [See decision of the Queen's Bench below, in effect reversing this case.] 12 C. P. R. 198. For definition of the word "*replevin*," see \* below.

(5.) *A similar case decided by the Court of Queen's Bench.*—Replevin against two school trustees and one King, a bailiff, for a horse. Defendants pleaded, 1. That they did not take; and 2, an avowry, setting out in substance that on the 30th of October, 1858, a special meeting of the freeholders and householders of the section had been duly called to procure a school site and erect a school-house thereon, at which it was agreed to procure a certain site named: that this was procured and the school-house built: that the plaintiff was duly assessed for a sum specified: that the trustees by their warrant commanded King to collect it; and that after demand and default made he seized the horse. The plaintiff pleaded to the avowry, 1st, *de injuriâ*; and, 2nd, as to the justification by the trustees, that the meeting was void, because before it took place a special meeting of the freeholders was duly held to procure a school site, at which a majority of the trustees differed from a majority of those present with regard to the site, in

\* *Replevin*: the name of an action for the recovery of goods and chattels. *Replevy*: to re-deliver goods which have been distrained, to the original possessor of them, on his giving pledges in an action of replevin.

consequence of which the freeholders and householders, the trustees, and local superintendent, each appointed an arbitrator to decide the question; that the arbitrators determined upon a site specified, different from that mentioned in the avowry, which award remained in force, and that the trustees, contrary to this decision, wrongfully purchased the site mentioned in the avowry. The defendants replied that there was no such award. As to this issue taken upon the first plea of the defendants, it appeared that the horse was seized by King under a warrant signed by two trustees, commencing: "We, the undersigned trustees of school section," &c., and sealed with the corporate seal. *Held*, that the trustees were liable personally, not in their corporate capacities only. With regard to the second and third issues, raised by the plea of *de injuriâ* to the avowry; and replication denying the award, the evidence showed that in 1857 the inhabitants were divided as to the choice of a school site, and an award was made but not acted upon: that in 1858 the same difference existed, and one of the trustees also differed from his co-trustees; that in March the two trustees, defendants, obtained a conveyance of half an acre, part of lot 15, and in May a meeting was held at which arbitrators were named and an award made; but the inhabitants being still dissatisfied another meeting was held in July, when the arbitrators mentioned in the plea to the avowry were chosen. In the meantime the building was commenced upon the land conveyed. On the 4th of September an award was drawn up [in which a blank was left for a description of the site.] On the 30th of October, 1858, a meeting was held, having been regularly called by the two trustees, to settle the question finally, and a resolution passed adopting [as the site] the land conveyed. In April, 1859, the two trustees, defendants, met, the third being absent from the country, and resolved upon the rate, which was inserted by the clerk in the roll, and the warrant was issued to King, who seized the plaintiff's horse. The plaintiff, after that, set about getting the award of September, 1858, which was afterwards filled up by two of the arbitrators, who stated that it had been left blank because they did not know the precise description of London's land. *Held*, that upon the second issue raised by plaintiff, defendants were entitled to succeed, for the evidence sustained the avowry. And that upon the third issue raised by the plaintiff they were also entitled to the verdict, for there was in fact no award made, and even as it was altered after execution the description was too uncertain. Ryland v. The same defendants, in the Court of Common Pleas, commented upon. [See above.] *Held*, that under the circumstances proved, the reference did not make the subsequent meeting illegal. *Held*, also, upon demurrer, that the avowry was good, the omission of any averment essential to the validity of the rate being cured by the second plea of the plaintiff to it, which relied wholly upon the award: that the second plea of the plaintiff was bad, for not shewing that before the award the trustees and inhabitants had not duly selected the site built upon, as they might do notwithstanding the reference; and that the replication to it denying the award was a good answer.—*Vance v. King et al*, No. 1, *Hallowell*. 21 Q. B. R. 187.

NOTE.—See also Decisions of the Superior Courts in regard to School Houses, Chapter II., Section 13, pages 19 and 20.



## CHAPTER VIII.

## PUBLIC SCHOOL TEACHERS.

## 1.—What Constitutes a Public School Teacher.

A duly qualified public school teacher is one who, at the time of engaging with the trustees, and during the whole time of teaching their school, is possessed of a "legal certificate of qualification" (whether first, second, or third-class), issued under the authority of the Public School Acts of Ontario.

## 2.—Who cannot hold the office of Public School Teacher.

The law declares, that "all agreements between trustees and teachers, to be valid and binding, shall be in writing, signed by the parties thereto, and sealed with the corporate seal, and may lawfully include any stipulation to provide the teacher with board and lodging."

NOTE.—All agreements between trustees and a teacher must be signed by at least two of the trustees and a teacher, and must have the *corporate seal* of the section attached to it, (as above) otherwise the trustees may be made *personally responsible* for the fulfilment of their agreement, and can then be sued individually by the teacher. It should also be entered in the trustees' book, and a copy of it given to the teacher. (See form of agreement between trustees and teacher, as given below. \*) The trustees being a corporation, their agreement with their teacher is binding on their successors in office, if made in accordance with the foregoing section; and should they refuse or wilfully neglect to exercise the corporate powers vested in them to give it effect, they would be personally liable for the amount due a teacher. The mode of settling disputes between trustees and a teacher is by suit in the Division Court.

## \* FORM OF AGREEMENT BETWEEN TRUSTEES AND TEACHERS.

We, the undersigned, Public School Trustees of Section No. —, in the Township of —, in the County of —, by virtue of the authority vested in us by the School Acts of Ontario, have chosen *(here insert the Teacher's name)*, who holds a — class certificate of qualification, to be a Teacher in said School; and we do hereby contract with and employ such Teacher, at the rate of *(here insert the sum in words)*, per annum, from and after the date hereof; and we further bind and oblige ourselves and our successors in office, faithfully to observe and comply with the school regulations relating to us, and to employ the powers with which we are legally invested by the said Acts to collect and pay the said Teacher, during the continuance of this agreement, the sum for which we hereby become bound,—the said sum to be paid by us to the said Teacher *(quarterly, monthly, &c., as the case may be.)* And the said Teacher hereby contracts with the Trustees herein named, and binds himself *(or herself)* to teach and conduct the Public School in said School Section, according to the School Law, and the regulations which are in force under its authority. This agreement shall continue in force *(here insert the period of agreement)*, from the date hereof (unless the certificate of the said teacher should in the meantime be revoked or annulled, according to law), and shall not include any teaching on Saturdays, or on other lawful holidays and vacations, prescribed under the authority of the School Law; but all such holidays and vacations, during and at the immediate close of the term of this agreement, shall be at the absolute disposal of the teacher, without any deduction from his salary whatsoever.

Given under our hands and seals of office,  
this — day of —, and 187 .

K. L., *Witness.*

A. B. } *Trustees*  
C. D. }  
E. F. } *corporate seal.*  
G. H., Teacher. *(Seal.)*

NOTE.—See "Decisions of the Courts relating to Trustees and Teachers," section 13 of this chapter.

### 3.—Assistant Teachers in a Public School.

No high, or public school trustee, and no Inspector, can lawfully hold the office of, or act as a, public school teacher, and *vice versa*.

NOTE.—For conditions on which teachers may obtain certificates of qualification, see chapter XII.

### 4.—Who shall be the Master of the School.

Whenever the *average attendance* of pupils in a public school reaches *fifty*, the trustees are required to "employ an additional teacher as an assistant."

NOTE.—The law expressly declares that every person receiving any part of the school fund (as teacher or assistant), shall hold a legal certificate of qualification. The Superior Courts have also decided that trustees cannot legally levy a rate for the payment of a teacher who does not possess the necessary qualifications as such under the school laws. (See clause (4), section 12 of this chapter, page 62.)

### 5.—General powers of the Master of a Public School.

In every school in which there are two or more teachers employed therein, the trustees shall determine who shall be considered as the master of the school.

NOTE.—The head teacher employed in any public school, in which there is more than one teacher, shall be designated and known as the *master*; and the others shall be named first, second, or third, &c., assistant *teacher*.

### 6.—Discipline in the School—Authority over Pupils.

The master of every school is a public officer, and, as such, shall have power, and it shall be his duty to observe and enforce the following rules:—

(1.) *See that the Rules are observed.*—He shall see that these general rules and regulations, and any special rules (not inconsistent with them) which may be approved by the trustees for their respective schools, are duly and faithfully carried out, subject to appeal, in case of dissatisfaction, to the Inspector. He shall read, or cause to be read, in his school, at least once in each quarter (or otherwise inform the pupils of), so much of the regulations as shall be necessary to give them a proper understanding of the rules by which they are governed.

(2.) *Prescribe duties of Teachers.*—He shall prescribe (with the assent of the trustees) the duties of the several teachers in his school, but he shall be responsible for the control and management of the classes under their charge.

(3.) *Religious exercises—Ten Commandments.*—He shall see that the regulations in regard to *Opening and Closing Exercises of the Day* are observed, and that the Ten Commandments are duly taught to all the pupils, and repeated by them once a week.

## 7.—Duties of Masters and Teachers in regard to Teaching.

It shall also be the duty of each master and teacher of a public school to observe the following regulations:—

(1.) *General Principles of Government.*—Masters and teachers are to evince a regard for the improvement and general welfare of their pupils; treat them with kindness, combined with firmness, and aim at governing them by their affections and reason, rather than by harshness and severity. Teachers shall also, as far as practicable, exercise a general care over their pupils in and out of school, and shall not confine their instruction and superintendence to the usual school duties, but shall, as far as possible, extend the same to the mental and moral training of such pupils, to their personal deportment, to the practice of correct habits and good manners among them, and to omit no opportunity of inculcating the principles of TRUTH and HONESTY, the duties of respect to superiors, and obedience to all persons placed in authority over them.

(2.) *Discipline.*—Each master and teacher shall practice such discipline in his school, class, or department, as would be exercised by a kind, firm, and judicious parent in his family. It is strictly enjoined upon all teachers in the schools to avoid the appearance of indiscreet haste in the discipline of their pupils; and in any difficult cases which may occur, to apply to the master [if an assistant], inspector, or to the trustees (as the case may be) for advice and direction.

NOTE.—The following are modes to be adopted or avoided:—

(1.) *Proper.*—Reproof, kindly but firmly given, either in private or before the school, as circumstances require it, or such severe punishment as the case really warrants, administered as directed in the above regulation.

(2.) *Improper.*—Contemptuous language, reproof administered in passion, personal indignity or torture, and violation of the laws of health.

(3.) *State of feeling among Pupils.*—Masters and teachers shall cultivate kindly and affectionate feelings among the pupils; discountenance quarrelling, cruelty to animals, and every approach to vice.

(4.) *Power to suspend Pupils.*—The master shall suspend (subject to appeal, by the parent or guardian, to the trustees) any pupil for any of the following reasons:—

(a.) Truancy persisted in.

(b.) Violent opposition to authority.

(c.) Repetition of any offence after notice.

(d.) Habitual and determined neglect of duty.

(e.) The use of profane, obscene, or other improper language.

(f.) General bad conduct, and bad example, to the injury of the school.

(5.) Cutting, marring, destroying, defacing, or injuring any of the public school property, such as buildings, furniture, seats, fences, trees, shrubbery, &c.; or writing any obscene or improper words on the fences, walls, privies, or any part of the premises; provided that

any master suspending a pupil for any of the causes above named, shall immediately, after such suspension, give notice thereof, in writing, to the parent or guardian of such pupil, and to the trustees, in which notice shall be stated the reason for such suspension; but no pupil shall be expelled without the authority of the trustees.

(6.) *Expulsion of Pupils.*—When the example of any pupils is very hurtful to the school, and in all cases where reformation appears hopeless, it shall be the duty of the master, with the approbation of the trustees, to expel such pupil from the school. But any pupil under public censure, who shall express to the master his regret for such a course of conduct, as openly and explicitly as the case may require, shall, with the approbation of the trustees and master, be re-admitted to the school. The third section of the School Law of 1871, declares "that any pupil who shall be adjudged so refractory by the trustees (or a majority of them) and the teacher, that his presence in the school is deemed injurious to the other pupils, may be dismissed from such school, and, where practicable, removed to an Industrial school," &c.

NOTE.—The master, under clause (2) of section 5 of this chapter, may authorize the assistant to suspend or otherwise deal with pupils in his class, as provided in clause (4) of this section.

### 8.—Duties of Masters and Teachers in regard to Teaching.

The law requires each master or teacher of a public school:

(1.) "*To Teach Diligently* and faithfully all the branches required to be taught in the school, according to the terms of his engagement with the trustees, and according to the regulations and provisions of the school acts."

(2.) *Classify Pupils.*—He shall classify the children according to the books used; study those books himself, and teach according to the improved method recommended in their prefaces. The division of the pupils into classes, as prescribed by the programme, shall be strictly observed; and no teacher shall be allowed to take his or her class beyond the limits fixed for the classes taught by such teachers, without the consent of the master (if an assistant) or inspector, except for occasional reviews; but individual pupils, on being qualified, may, with the consent of the master, be advanced from a lower to the higher class.

(3.) *Constant Employment to Pupils.*—He shall give the children under his charge constant employment in the studies prescribed in the authorized programme; and endeavour, by judicious and diversified modes, to render the exercises of the school pleasant, as well as profitable. In giving out the lessons for the next day, difficult parts should be explained, and where necessary, the best mode of studying them should be pointed out to the pupils.

NOTE.—Through a singular misapprehension on the part of some teachers, they think that the programme requires them to teach the whole aggregate hours pre-

scribed for the different subjects in the programme. This is an entire mistake. The object of the programme was two-fold—to provide work, (1), for the master or teacher, and (2), for the pupils while he was engaged. No master is required to teach more than  $27\frac{1}{2}$  hours per week; but while he is teaching one class one subject, the other classes should be engaged in studying the other subjects, according to the programme.

(4.) *Time-Table.*—Each master shall keep, in some conspicuous place in the school-room, a time-table, showing the order of exercises for each day in the week, and the time for each exercise, as prescribed in the programme of studies for public schools.

(5.) *Merit Cards—Prizes.*—In all the schools, the series of merit cards, prepared and authorized by the Education Department, shall be regularly used; and if prizes are given, it must be on the principles laid down in the explanatory memorandum accompanying that series of cards.

(6.) *Quarterly Examination.*—Each class in every school shall be open for public examination and inspection during the last week of every quarter; and the master or teacher shall call upon every pupil in the school, unless excused, to review or recite in the course of such examination.

(7.) *In School at 8½ a.m., &c.*—All teachers shall be in their respective schools, and open their rooms for the reception of pupils, at least fifteen minutes in the morning, and five minutes in the afternoon, before the specified time for beginning school; and during school hours they shall faithfully devote themselves to the duties of their office.

#### 9.—Duties of Masters or Teachers in regard to School Premises.

(1.) *Care of School Property.*—Each master [or teacher] shall exercise the strictest vigilance over the public school property in his charge:—the building, outhouses, fences, &c., furniture, apparatus, and books, belonging to the school, so that they may receive no injury; and give prompt notice, in writing, to the trustees, or person appointed by them, under section 12, chapter II., page 19, (if in cities, towns, or villages, to the inspector,) of any repairs which may require to be made to the building, premises, or furniture, &c., and of any furniture or supplies which may be required for the school.

(2.) *Regulations in regard to School Premises, &c.*—The trustees having made such provision relative to the school house and its appendages, as required by law (see section 9, chapter II., page 18), it shall be the duty of the master to give strict attention to the proper ventilation and temperature, as well as to the cleanliness of the school house; he shall also prescribe such rules for the use of the yard and out-buildings connected with the school house, as will insure their being kept in a neat and proper condition; and he shall be held responsible for any want of cleanliness about the premises.



(3.) *School open for Pupils.*—Care must be taken to have the school house ready for the reception of pupils at least *fifteen* minutes before the time prescribed for opening the school, in order to afford shelter to those who may arrive before the appointed hour. (See clause (7), section 7 of this chapter.)

(4.) *Out-Premises.*—The master [or teacher] shall see that the yards, sheds, privies, and other out-buildings, are kept in order; and that the school-house and buildings are locked at all proper times; and that all deposits of sweepings, from rooms or yards are removed from the premises.

(5.) *Fires and Sweeping.*—He shall employ, at a compensation to be fixed by the trustees, a suitable person to make fires, to sweep the rooms and halls daily, and dust the windows, walls, seats, desks, and other furniture in the same; but no master, assistant-teacher, or pupil shall be required to perform such duty, unless voluntarily, and with suitable compensation.

#### 10.—Duties of Masters and Teachers in regard to Library, Register, and Reports.

(1.) *Act as Librarian.*—Each master [or teacher] shall act as librarian of the school, and take charge of the books; also make, keep, and preserve a catalogue of the same; deliver, charge, receive, and credit the volumes given out; and keep a register of the same; number, label, and catalogue the books; and make returns of the library, its books, &c., as required by the library regulations.

(2.) *The Library.*—He shall keep the library open for the distribution (and return) of books] to the scholars, and ratepayers of the school division, on Friday afternoon of each week; but this duty shall not be permitted to interfere with the regular exercises of the school.

(3.) *General Register.*—He shall keep a general register of the school (to be furnished by the trustees), in which shall be entered, in each term, the date of the admission of each pupil, his or her name and age, from whence received; the parent's or guardian's name and residence; the names of each of the classes in the school, together with the names of the pupils in each such class; the promotion of pupils from one class to another; record of attendance of the pupil; date of his leaving the school, and destination, both as to place and occupation; and such other information as shall at all times give a correct idea of the condition of the school.

(4.) *Register.*—He shall keep the register (provided by the Education Department, and furnished by the inspector), which shall remain the property of the trustees, in which shall be entered the names and daily attendance of pupils, their proficiency in various studies and other information.

(5.) *Returns.*—The master [or teacher] shall make such returns, and at such times, as may be required by the [master] inspector, or trustees, relating to his class, school or department.

(6.) *Reports.*—He shall make the necessary term, special or annual reports to and with the trustees, to the inspector or Chief Superintendent, at such times and in such manner as may be required.

#### 11.—Regulations in regard to Sickness, Visiting Schools, Visitors, Presents, Teachers' Meetings, &c.

(1.) *Absence and sickness.*—No master or teacher shall be absent from the school in which he or she may be employed, without permission of the trustees or Inspector, except in case of sickness, in which case the absence of such teacher shall be immediately reported to the trustees; and no deduction from the salary of a teacher shall be made on account of temporary sickness, (not exceeding a reasonable time for the whole year), as certified by a medical man.

(2.) *Visiting Schools.*—The inspector may permit a public school master, or teacher, to be absent two of the ordinary teaching days in each half-year, for the purpose of visiting and observing the methods of classification, teaching and discipline practised in other schools than that in which he or she teaches; and such visit, with the name of the school or schools visited, shall be duly reported by such master or teacher to the inspector. Each public school master and teacher must give at least three days' notice to the trustees. In order that no loss of apportionment may accrue to any school in consequence of the master's absence under this regulation, a proportionate amount of average attendance will be credited to the school for the time so employed by the teacher; but under no circumstances can lost time be lawfully made up by teaching on any of the prescribed vacations, holidays, or half holidays, nor will such time be allowed by the department, or be reckoned by the inspector; but such permission shall not be given by the inspector if the absence of the teacher will, in his judgment, be injurious to the interests of the school; nor shall this permission be granted to any master or teacher who fails to report, or who has employed the time heretofore given to him otherwise than in visiting schools, as authorized by this regulation.

(3.) *Visitors' Book.*—The master (or teacher) shall keep the visitors book (which is required by law to be furnished by the trustees), in which shall be entered the dates of visits and names of visitors, with such remarks as they may choose to make.

(4.) *Visitors.*—Each master or trustee shall receive courteously the visitors appointed by law, and afford them every facility for inspecting the books used, and examine into the state of the school; he shall keep the visitors' book accessible, that the visitors may, if they

choose, enter remarks in it. The frequency of visits to the school by intelligent persons animates the pupils, and greatly aids the faithful teacher.

(5.) *Subscriptions, Collections, Presents, &c.*—No collection shall be taken up, or subscriptions solicited for any purpose, or notice of shows, or exhibitions given in any public school, without the consent of the trustees; nor shall the masters or teachers act as agents for books, or sell stationery, &c., or receive presents (unless presented to them on leaving the school), nor award, without the permission of the trustees, medals or other prizes of their own to the pupils under their charge.

(6.) *Teachers' Meetings.*—All masters and teachers in cities, towns, and villages, shall regularly attend the teachers' meetings, at such times, and under such regulations, as the Inspector shall direct, and by study, recitations, and general exercises, strive to systematize and perfect the modes of discipline and teaching in the public schools.

### 12.—Decisions of the Superior Courts in regard to Teachers.

(1.) *Signing an agreement with a Teacher is a mere approval of the appointment.*—The Court of Queen's Bench has decided that an inspector signing, together with trustees, a contract with a teacher, will be considered as having signed the same only as approving of the appointment, and not as contracting with the teacher.—*Campbell v. Elliott et al. County Model School, Middlesex*, 2 Q. B. R. 167.

(2.) *Trustees agreeing to furnish a Teacher with Fuel must be applied to for it.*—The Court of Queen's Bench has decided that when a teacher charged the trustees upon a special agreement stated to have been made by them, to furnish the said teacher with fuel when required, they could not be charged with a breach of covenant, as a request, with time and place, had not been stated in the teacher's declaration.—*Anderson v. Vansittart et al.*, 5 Q. B. R. 335. *Quære* by the Court, whether such an agreement could be enforced?

(3.) *Trustee cannot be sued for Money due.*—The Court of Queen's Bench has decided, that trustees refusing to give an order to a teacher for the school fund, according to their agreement with him, cannot be sued for money due, but for the refusal to give the order.—*Quinn v. Trustees, 4. Seymour*. 7 Q. B. R. 130.

(4.) *No Rate can be imposed for the payment of an Unqualified Teacher.*—The Court of Queen's Bench has decided that no rate can legally be imposed by trustees for the salary of an unqualified teacher.—*Chief Superintendent of Education appellant, in re Stark v. Montague et al.* 14 Q. B. R. 473.

(5.) *Trustee and Teacher are not Master and Servant.*—The Court of Queen's Bench has decided that the Master and Servant Act, (10 and 11 Vict., c. 23), does not apply to school trustees and school teachers. Where a school trustee, therefore, had been convicted under it as a master, the conviction was quashed.—*In re Laurence Joyce, No. —, Pittsburg, convicted by Robert Anglin*, 7. P. 19 Q. B. R. 197.

(6.) *Representation as to the Character of a Teacher by a Ratepayer is a Privileged Communication.*—The Court of Queen's Bench has decided that a representation by the assessed inhabitants of a school section as to the character of a teacher, made with a view of obtaining redress, is a privileged communication, which it is of importance to the public to protect; and such a statement would not be the less privileged if made by mistake to the wrong quarter. Where the libel complained of is clearly a privileged communication, the inference of malice cannot be raised upon the face of the libel itself, as in other cases it might be, but the plaintiff must

give extrinsic evidence of actual express malice, he must also prove the statement to be false as well as malicious; and the defendant may still make out a good defence by proving that he had good ground to believe the statement true, and acted honestly under that persuasion. *Quere* by the Court, whether a communication of this nature, made by an inhabitant of any other part of the Province, would not be privileged.—*McIntyre, v. McBean et al.* 13 Q. B. R. 534.

NOTE.—The Assessment Law does not exempt school teachers either from the payment of a tax upon their salary, (if over \$400 per annum), or from the performance of two days of statute labour if the salary be under \$400. As to the control of the teacher over the school house, see decision of the Court (6), on page 50.

## CHAPTER IX.

### RELATION OF INSPECTORS TO PUBLIC SCHOOL TEACHERS.

[NOTE.—No public school inspector shall, during his incumbency, hold the office of trustee of a high or public school, nor act as head master of a high school, or master or teacher of a public school.]

#### 1.—Power and Duty of an Inspector.

The School Law requires each inspector of public schools "To see that all the schools are managed and conducted according to law." It also declares that he "shall have the oversight of all public schools in the townships and villages within the county or union of counties, or part of the county or union of counties, for which he shall be appointed, and shall have all the powers in each municipality within his jurisdiction, and be subject to all the obligations conferred or imposed by law, according to such instructions as may be given to him, from time to time, by the Chief Superintendent of Education."

#### 2.—Visitation of Schools.

The county inspector shall visit every public and separate school under his jurisdiction at least once during each half year. He shall devote, on an average, half a day to the examination of the classes and pupils in each school, and shall record the result of such examination in a book to be kept for that purpose. He shall also make enquiry and examination in such manner as he shall think proper, into all matters affecting the condition and operations of the school, the results of which he shall record in a book, and transmit it, or a copy thereof, annually, on completing his second half-yearly inspection, to the Education Department; (but he shall not give any previous notice to the teacher or trustees of his visit.)

#### 3.—Authority of an Inspector in a School.

The authority of an inspector in a school, while visiting it, is supreme; the master, teachers, and pupils are subject to his direction;

and he shall examine the classes and pupils, and direct the masters or teachers to examine them, or to proceed with the usual exercises of the school, as he may think proper, in order that he may judge of the mode of teaching, management, and discipline in the school, as well as of the progress and attainments of the pupils.

#### 4.—Procedure in the Visitation of Schools.

On entering a school, with a view to its inspection, and having courteously introduced himself to the teacher (if a stranger), or, if otherwise, having suitably addressed him, the inspector shall:

(1.) Note in the inspector's book, the time of his entrance, and on leaving, the time of departure from the school.

(2.) See whether the business going on corresponds with that assigned to that particular hour on the time-table, and generally whether the arrangements which it indicates agree with the prescribed programme of studies, and are really carried out in practice. If not, he should at once privately notify the teacher of the omission, and the penalty for neglect to observe the regulations.

(3.) Examine the register, and other school records, and take notes of the attendance of pupils, number of classes in the school at the time of his visit, &c.

(4.) Observe the mode of teaching, the management of the school, and generally its tone and spirit; also, whether the bearing, manner, and language of the teacher, his command over the pupils, and their deportment at the time of his visit are satisfactory.

#### 5.—Intercourse with Teachers and Pupils.

*Inspection.*—In his intercourse with masters and teachers, and during his visit to their schools, the inspector should treat them with kindness and respect, counselling them privately on whatever he may deem defective or faulty in their manner and teaching; but by no means should he address them authoritatively, or in a fault-finding spirit in the presence or hearing of pupils.

#### 6.—See to Attendance of Children at School.

The inspector should see that the provisions in the third section of the school act of 1871, in regard to the right of every child in the municipality under his jurisdiction to attend some school, are not allowed to remain a dead letter; but he should, where necessary, frequently call attention to the subject.

#### 7.—Teachers Visiting other Schools.

County and city inspectors shall have authority to allow teachers to visit schools, under the restrictions contained in clause (2), section 10, of this chapter.



### 8.—Payments to Teachers' Superannuation Fund.

The forty-third section of the School Act of 1871, declares that each male teacher holding a certificate of qualification, shall pay four dollars annually into the superannuated teachers' fund, and "each inspector of schools is hereby authorized and *required* to deduct [two dollars] half-yearly from any payments made by him to any male teacher under his jurisdiction, and transmit the same to the Education Department." In doing so, he will have to see that the sum of two dollars, payable semi-annually to the superannuated teachers' fund by each male teacher, is deducted from each teacher's half yearly salary, whether paid direct to the teacher by the trustees, or by their order on the inspector.

NOTE.—Where trustees pay to, and a male teacher receives from them, his whole salary, without accounting to the inspector for the half yearly payment to the superannuation fund, the inspector should notify the trustees that until the money is sent to him no further apportionment will be paid to their school. This would effectually prevent the evasion sometimes practised in this matter. [See note to next section.]

### 9.—Cheques to Teachers payable to themselves.

Any cheques for school money due a section, must be made payable to the (qualified) teacher or his order, and to no other person; and no cheque shall be given to such teacher except on an order signed by a majority of the trustees of the school section, and attested by a lawful corporate seal, and then only for the time during which the teacher has held a legal certificate of qualification, not cancelled, suspended, recalled, or expired.

NOTE.—In giving cheques to male teachers the half-yearly payment of two dollars to the superannuated teachers' fund must be deducted. In case trustees should pay male teachers in full out of the funds of the section, and then give a cheque to their next teacher, (male or female), for the full amount apportioned to their section, the inspector, being responsible for the money, must deduct the \$2 already due, besides taking the remedial steps indicated in the note to the preceding section.

### 10.—Granting Special Certificates.

The School Law authorizes inspectors "to give to any candidate, *on due examination*, according to the programme authorized for the examination of teachers, a certificate of qualification to teach school within the limits of the charge of the inspector, until (but no longer than) the next ensuing meeting of the board of examiners of which such inspector is a member; but no such certificate shall be given a second time, or be valid, if given a second time, to the same person in the same county."

NOTE.—In giving effect to this provision of the Act, inspectors will observe : (1) that they are required to examine all candidates desiring special certificates; (2) that they are not authorized to grant "permits," or endorse as good any previous certificates of the applicant; (3) that the special certificates given can only have the value of those of the third class, and be valid only "within the limits of the charge of the inspector; (4) that under no circumstances can they give a

special certificate to a teacher who has already previously received one from any (local superintendent or) inspector in the same county; and (5) that no certificate can be given to a teacher who has been rejected by the board of examiners, unless by consent of such board, and under the authority of the Education Department.

### 11.—Suspension of Teachers' Certificates.

When an inspector finds it necessary to suspend the certificate of a master or teacher, he should not do so on the mere report of improper conduct, immorality or incompetency, but he should give the master or teacher due notice of the charge against him, and afford him a full opportunity for defence; he should also examine carefully into the alleged facts of the case, and, if necessary, visit the school and assure himself personally of their truth before proceeding to suspension.

NOTE.—Officers, required by law to exercise their judgments, are not answerable for mistakes in law, or mere errors of judgment, without any fraud or malice.

### 12.—Verify Attendance of Pupils.

The inspector should see that the aggregate attendance of each school is correctly added up, and divided by the divisor for the half year, and that no lost time is made up by teaching on Saturdays, or other holidays, or vacations. (See chapter XI.) Under clause (2) of section 10 of this chapter, teachers may employ certain days in the year in visiting other schools. In order that the school may not lose a corresponding proportion of the school fund, the inspector is authorized to add a proportionate amount of average attendance for time so employed, or use a smaller divisor. After having examined and tested the correctness of the return, the inspector should file away and carefully preserve it, so that it may be handed over, with other school documents, to his successor, when he retires from office.

### 13.—Check against Incorrect Returns.

The half-yearly return of the pupils' names, and number of days in which they attended during each month, will be a check against false or exaggerated returns; as the inspector can, in his visit to any school, take the return with him, compare it with the school register, and make any further enquiries he may deem necessary. He should, also, at his visits to the school, take notes in his book of the school attendance, &c. The returns, carefully compiled, will furnish materials for the statistical tables in the inspector's report, and will show at what periods of the year the attendance of pupils at the schools is the largest, and how many attend school during two, four, six, &c., months of the year.

## CHAPTER X.

## DUTIES OF PUPILS IN PUBLIC SCHOOLS.

(1.) *Cleanliness and Good Conduct.*—Pupils must come to school clean and neat in their persons and clothes. They must avoid idleness, profanity, falsehood, and deceit, quarrelling and fighting, cruelty to dumb animals; be kind and courteous to each other, obedient to their instructors, diligent in their studies, and conform to the rules of their school.

(2.) *Tardiness* on the part of pupils shall be considered a violation of the rules of the school, and shall subject the delinquents to such penalty as the nature of the case may require, at the discretion of the master.

(3.) *Leaving before Closing.*—No pupil shall be allowed to depart before the hour appointed for closing school, except in case of sickness, or some pressing emergency; and then the master or teacher's consent must first be obtained.

(4.) *Absence.*—A pupil absenting himself from school, except on account of sickness, or other urgent reasons, satisfactory to the master, forfeits his standing in the class, and his right to attend the school for the remainder of the quarter.

(5.) *Excuses.*—Any pupil not appearing at the regular hour of commencing any class of the school which he may be attending, without a written excuse from his parent or guardian, may be denied admittance to the school for the day, or half-day, at the discretion of the teacher.

(6.) *Punctual Attendance.*—Every pupil, once admitted to school, and duly registered, shall attend it at the commencement of each term, and continue in punctual attendance until its close, or until he is regularly withdrawn (by notice to the teachers to that effect); and no pupil violating this rule shall be entitled to continue in this school, or be admitted to any other, until such violation is certified by the parents or guardian to have been necessary and unavoidable, which shall be done personally or in writing.

(7.) *School to Attend.*—Pupils in cities, towns, and villages shall be required to attend any particular school which may be designated for them by the inspector, with the consent of the trustees. And the inspector alone, under the same authority, shall have the power to make transfers of pupils from one school to another.

(8.) *Absence from Examination.*—Any pupil absenting himself from examination, or any portion thereof, without permission of the master, shall not thereafter be admitted to any public school, except

by authority of the inspector, in writing; and the names of all such absentees shall be reported by the master immediately to the trustees; and this rule shall be read to the school just before the examination days, at the close of each quarter.

(9.) *Going to and from School.*—Pupils shall be responsible to the master for any misconduct on such school premises, or in going to or returning from school, except when accompanied by their parents or guardians, or by some person appointed by them.

(10.) *Supply of Books.*—No pupil shall be allowed to remain in the school unless he is supplied with the books and requisites required to be used by him in the school; but in case of a pupil being in danger of losing the advantages of the school, by reason of his inability to obtain the necessary books or requisites, through the poverty of his parents, or guardians, the trustees have power to procure and supply such pupil with the books and requisites needed.

(11.) *Fees for Books.*—The fees for books and stationery, &c., as fixed by the trustees in cities and towns, whether monthly or quarterly, shall be payable in advance; and no pupil shall have right to enter or continue in the school until he shall have paid the appointed fee.

(12.) *Property Injured.*—Any property of the schools that may be injured or destroyed by pupils, must be made good forthwith by the parent, or guardian, under a penalty of the suspension of the delinquent pupil. (See clause (4), section 6 of this chapter.)

(13.) *Contagious Diseases.*—No pupil shall be admitted to, or continue in any of the public schools, who has not been vaccinated, or who is afflicted with, or has been exposed to, any contagious disease, until all danger of contagion from such pupil, or from the disease or exposure shall have passed away, as certified in writing by a medical man.

(14.) *Effects of Expulsion.*—No pupil shall be admitted to any public school who has been expelled from any school, unless by the written authority of the inspector. [See clause (5) section 6 of this chapter.]

(15.) *Certificates on Leaving.*—Every pupil entitled thereto shall, when he leaves, or removes from, a school, receive a certificate of good conduct and standing, in the form prescribed.

certificate of the highest grade (A), renders the holders eligible for the office of county inspector.

(2.) *Third Class* certificates are valid only in the county where given, and for three years, and not renewable, except on the recommendation of the county inspector; but a teacher, holding a third class certificate, may be eligible in less than three years, for examination for a second class certificate, on the special recommendation of the county inspector.

NOTE.—(1.) Attendance at the Normal School for Ontario, with the required practice in the Model Schools, and passing the requisite examination for a first class certificate, shall be considered equivalent to teaching five years in a public or private school. So, also, attendance at the Normal School, with the required practice in the Model Schools, and passing the requisite examination for a second class certificate, shall be considered equivalent to teaching three years in a public or private school.

(2.) In regard to teachers in French or German settlements, a knowledge of the French or German grammar respectively may be substituted for a knowledge of the English grammar, and the certificates to the teachers expressly limited accordingly.

### 3.—Minimum Qualifications required for Third Class Certificates of Teachers in the Public Schools.

(1.) *Reading*.—To be able to read any passage selected from the authorised reading books intelligently, expressively, and with correct pronunciation.

(2.) *Spelling*.—To be able to write correctly any passage that may be dictated from the reading books.

(3.) *Etymology*.—To know the prefixes and affixes (Authorized Spelling Book, pp. 154-169).

(4.) *Grammar*.—To be well acquainted with the elements of English grammar, and to be able to analyze and parse, with application of the rules of syntax, any ordinary sentence (authorized grammars).

(5.) *Composition*.—To be able to write an ordinary business letter correctly, as to form, modes of expression, &c.

(6.) *Writing*.—To be able to write legibly and neatly.

(7.) *Geography*.—To know the definitions (Lovell's General Geography), and to have a good general idea of physical and political geography, as exhibited on the maps of Canada, America generally, and Europe.

*History*.—To have a knowledge of the outlines of ancient and modern history (Collier), including the introductory part of the history of Canada pp. 5-33 (Hodgins).

(9.) *Arithmetic*.—To be thoroughly acquainted with the arithmetical tables, notation, and numeration, simple and compound rules, greatest common measure, and least common multiple, vulgar and decimal fractions and proportion, and to know generally the reasons of the processes employed; to be able to solve problems in said rules with

accuracy and neatness. To be able to work, with rapidity and accuracy, simple problems in mental arithmetic (Authorized Text Book).

(10.) *Education*.—To have a knowledge of school organization and the classification of pupils, and the school law, and regulations relating to teachers.

#### 4.—Minimum Qualifications for Second Class Provincial Certificates.

(1.) *Reading*.—To be able to read intelligently and expressively a passage selected from any English author.

(2.) *Spelling*.—To be able to write correctly a passage dictated from any English author.

(3.) *Etymology*.—To know the prefixes, affixes, and principal Latin and Greek roots. To be able to analyze etymologically the words of the Reading Books (Authorized Spelling Book).

(4.) *Grammar*.—To be thoroughly acquainted with the definitions and grammatical forms and rules of syntax, and to be able to analyze and parse, with application of said rules, any sentence in prose or verse (Authorized Text Books).

(5.) *Composition*.—To be familiar with the forms of letter writing, and to be able to write a prose composition on any simple subject, correctly as to expression, spelling, and punctuation.

(6.) *Writing*.—To be able to write legibly and neatly a good running hand.

(7.) *Geography*.—To have a fair knowledge of physical and mathematical geography. To know the boundaries of the continents; relative positions and capitals of the countries of the world, and the positions, &c., of the chief islands, capes, bays, seas, gulfs, lakes, straits, mountains, rivers, and river-slopes. To know the forms of governments, the religions, and the natural products and manufactures of the principal countries of the world (Lovell's General Geography).

(8.) *History*.—To have a good knowledge of general, English, and Canadian history (Collier and Hodgins).

(9.) *Education*.—To be familiar with the general principles of the science of education. To have a thorough knowledge of the approved modes of teaching reading, spelling, writing, arithmetic, grammar, composition, geography, history, and object lessons. To be well acquainted with the different methods of school organization and management—including school buildings and arrangements, classification of pupils, formation of time and limit tables, modes of discipline, &c., &c. To give evidence of practical skill in teaching.

(10.) *School Law*.—To have a knowledge of the school law, and official regulations relating to trustees and teachers.



certificate of the highest grade (A), renders the holders eligible for the office of county inspector.

(2.) *Third Class certificates* are valid only in the county where given, and for three years, and not renewable, except on the recommendation of the county inspector; but a teacher, holding a third class certificate, may be eligible in less than three years, for examination for a second class certificate, on the special recommendation of the county inspector.

NOTE.—(1.) Attendance at the Normal School for Ontario, with the required practice in the Model Schools, and passing the requisite examination for a first class certificate, shall be considered equivalent to teaching five years in a public or private school. So, also, attendance at the Normal School, with the required practice in the Model Schools, and passing the requisite examination for a second class certificate, shall be considered equivalent to teaching three years in a public or private school.

(2.) In regard to teachers in French or German settlements, a knowledge of the French or German grammar respectively may be substituted for a knowledge of the English grammar, and the certificates to the teachers expressly limited accordingly.

### 3.—Minimum Qualifications required for Third Class Certificates of Teachers in the Public Schools.

(1.) *Reading*.—To be able to read any passage selected from the authorised reading books intelligently, expressively, and with correct pronunciation.

(2.) *Spelling*.—To be able to write correctly any passage that may be dictated from the reading books.

(3.) *Etymology*.—To know the prefixes and suffixes (Authorized Spelling Book, pp. 154-169).

(4.) *Grammar*.—To be well acquainted with the elements of English grammar, and to be able to analyze and parse, with application of the rules of syntax, any ordinary sentence (authorized grammars).

(5.) *Composition*.—To be able to write an ordinary business letter correctly, as to form, modes of expression, &c.

(6.) *Writing*.—To be able to write legibly and neatly.

(7.) *Geography*.—To know the definitions (Lovell's General Geography), and to have a good general idea of physical and political geography, as exhibited on the maps of Canada, America generally, and Europe.

*History*.—To have a knowledge of the outlines of ancient and modern history (Collier), including the introductory part of the history of Canada pp. 5-33 (Hodgins).

(9.) *Arithmetic*.—To be thoroughly acquainted with the arithmetical tables, notation, and numeration, simple and compound rules, greatest common measure, and least common multiple, vulgar and decimal fractions and proportion, and to know generally the reasons of the processes employed; to be able to solve problems in said rules with

accuracy and neatness. To be able to work, with rapidity and accuracy, simple problems in mental arithmetic (Authorized Text Book).

(10.) *Education*.—To have a knowledge of school organization and the classification of pupils, and the school law, and regulations relating to teachers.

#### 4.—Minimum Qualifications for Second Class Provincial Certificates.

(1.) *Reading*.—To be able to read intelligently and expressively a passage selected from any English author.

(2.) *Spelling*.—To be able to write correctly a passage dictated from any English author.

(3.) *Etymology*.—To know the prefixes, affixes, and principal Latin and Greek roots. To be able to analyze etymologically the words of the Reading Books (Authorized Spelling Book).

(4.) *Grammar*.—To be thoroughly acquainted with the definitions and grammatical forms and rules of syntax, and to be able to analyze and parse, with application of said rules, any sentence in prose or verse (Authorized Text Books).

(5.) *Composition*.—To be familiar with the forms of letter writing, and to be able to write a prose composition on any simple subject, correctly as to expression, spelling, and punctuation.

(6.) *Writing*.—To be able to write legibly and neatly a good running hand.

(7.) *Geography*.—To have a fair knowledge of physical and mathematical geography. To know the boundaries of the continents; relative positions and capitals of the countries of the world, and the positions, &c., of the chief islands, capes, bays, seas, gulfs, lakes, straits, mountains, rivers, and river-slopes. To know the forms of governments, the religions, and the natural products and manufactures of the principal countries of the world (Lovell's General Geography).

(8.) *History*.—To have a good knowledge of general, English, and Canadian history (Collier and Hodgins).

(9.) *Education*.—To be familiar with the general principles of the science of education. To have a thorough knowledge of the approved modes of teaching reading, spelling, writing, arithmetic, grammar, composition, geography, history, and object lessons. To be well acquainted with the different methods of school organization and management—including school buildings and arrangements, classification of pupils, formation of time and limit tables, modes of discipline, &c., &c. To give evidence of practical skill in teaching.

(10.) *School Law*.—To have a knowledge of the school law, and official regulations relating to trustees and teachers.

- (11.) *Music*.—To know the principles of vocal music.  
 (12.) *Drawing*.—To understand the principles of linear drawing.  
 (13.) *Book-Keeping*.—To understand book-keeping by single and double entry.

(14.) *Arithmetic*.—To be thoroughly familiar with the authorized arithmetic in theory and practice, and to be able to work problems in the various rules. To show readiness and accuracy in working problems in mental arithmetic.

(15.) *Mensuration*.—To be familiar with the principal rules for the mensuration of surfaces.

(16.) *Algebra*.—To be well acquainted with the subject as far as the end of section 153, page 129, of the Authorized Text Book (Sangster).

(17.) *Euclid*.—Books I. and II., with problems.

NOTE.—For female teachers, Euclid may be omitted, and the chapter on the Economy of the Household, pp. 181-183 of Dr. Ryerson's *First Lessons in Agriculture*, substituted for it.

18. *Natural Philosophy*.—To be acquainted with properties of matter, and with statics, hydrostatics, and pneumatics, as set forth in pages 1-100, Sangster's *Natural Philosophy*, Part I.

(19.) *Chemistry*.—To understand the elements of chemistry, as taught in the first part of Dr. Ryerson's *First Lessons in Agriculture*, pages 2-76.

(20.) *Botany*.—To be familiar with the structure of plants, &c., and the uses of the several parts (*First Lessons in Agriculture*).

(21.) *Human Physiology*.—Cutter's *First Book on Anatomy, Physiology, and Hygiene*.\*

##### 5.—Additional for those who desire Special Certificates for Teaching Agriculture under Section Thirteen of the School Act of 1871.

(1.) *Natural History*.—General view of animal kingdom—characters of principal classes, orders, and genera (Ellis' *Natural History*).

(2.) *Botany*.—Vegetable physiology and anatomy—systematic botany—flowering plants of Canada—(Gray's "How Plants Grow.")

(3.) *Agricultural Chemistry*.—Proximate and ultimate constituents of plants and soils—mechanical and chemical modes of improving soils—rotation of crops, agricultural and domestic economy, &c. (Dr. Ryerson's *First Lessons in Agriculture*).

\* The following little works are highly recommended for general use, both by teachers and pupils, viz.:—"The House I live in," by T. C. Girtin, Surgeon, (Longmans), and "Our Earthly House and its Builder," (Religious Tract Society).

### 6.—Minimum Qualifications for First-Class Provincial Certificates.\*

- (1.) *Reading*.—To be able to read intelligibly and expressively a passage selected from any English author.
- (2.) *Spelling*.—To be able to write correctly a passage dictated from any English author.
- (3.) *Etymology*.—As for second class teachers.
- (4.) *Grammar*.—To be thoroughly acquainted with the subject, as contained in the Authorized Text Books.
- (5.) *Composition*.—As for second class teachers.
- (6.) *English Literature*.—To have a general acquaintance with the history of English literature (Collier).
- (7.) *Writing*.—As for second class teachers.
- (8.) *Geography*.—As for second class teachers, and, in addition, to possess a special knowledge of the geography of British America and the United States, including the relative positions of the provinces and states, with their capitals; to understand the structure of the crust of the earth; use of the globes (Lovell's General Geography, Keith on the globes).
- (9.) *History*.—General, English, and Canadian (Collier and Hodgins).
- (10.) *Education*.—As for second class teachers, and in addition, to possess a good knowledge of the elementary principles of mental and moral philosophy, and to be acquainted with the methods of teaching all the branches of the public school course.
- (11.) *School Law*.—To be acquainted with the law and official regulations relating to trustees, teachers, municipal councils, and school inspectors.
- (12.) *Music*.—To know the principles of vocal music.
- (13.) *Drawing*.—To evince facility in making perspective and outline sketches of common objects on the blackboard.
- (14.) *Book-keeping*.—As for second-class teachers.
- (15.) *Arithmetic*.—To know the subject as contained in the Authorized Arithmetic, in theory and practice. To be able to solve problems in arithmetical rules with neatness and dispatch. To be ready and accurate in solving problems in mental arithmetic.
- (16.) *Mensuration*.—To be familiar with rules for mensuration of surfaces and solids.
- (17.) *Algebra*.—To know the subject as contained in the Authorized Text Book completed.
- (18.) *Euclid*.—Books I., II., III., IV., definitions of V., and B. VI., with exercises.

\* Candidates for first class certificates are recommended to provide against failure, by also presenting themselves for examination for those of the second class.

NOTE.—For female teachers, Euclid may be omitted, and the chapter on the Economy of the Household, pp. 171-183 of Dr. Ryerson's First Lessons on Agriculture, may be substituted for it.

(19.) *Natural Philosophy*.—As for second class teachers; and, in addition, to be acquainted with dynamics, hydrodynamics, and acoustics, pp. 109-167 Sangster's Natural Philosophy, Part I.

(20.) *Chemical Physics*.—To have a good general acquaintance with the subjects of heat, light, and electricity.

(21.) *Chemistry*.—As for second-class teachers; and to be familiar with the definitions, nomenclature, laws of chemical combination, and to possess a general knowledge of the chemistry of the metalloids and metals (Roscoe).

(22.) *Human Physiology*.—As for second-class teachers. (See note to clause (21) of this chapter).

(23.) *Natural History*.—General view of animal kingdom; characters of principal classes, orders, and genera (Ellis' Natural History).

(24.) *Botany*.—Vegetable physiology and anatomy; systematic botany; flowering plants of Canada (Gray's "How Plants Grow.")

(25.) *Agricultural Chemistry*.—Proximate and ultimate constituents of plants and soils; mechanical and chemical modes of improving soils; rotation of crops, &c. &c. (Dr. Ryerson's First Lessons on Agriculture).

### CHAPTER XIII.

#### REGULATIONS IN REGARD TO THE SUPER- ANNUATION FUND.

1. The regulations for the administration of the Superannuated Teachers' Fund, adopted by the Council of Public Instruction, are as follows:

(1.) Teachers who become superannuated, or worn out, on or before the 1st day of January, 1854, and who produce the proofs required by law, of character and services as such, may share in this Fund according to the number of years they have respectively taught a public school in Ontario, by depositing with the Chief Superintendent of Education the preliminary subscriptions to the fund required by law.

(2.) Every teacher engaged in teaching since 1854, in order to be entitled, when he shall have become superannuated or worn out, to share in this fund, must have contributed to it at the rate of five



dollars per annum for each year, from the time when he began to teach, up to the time of his first annual subscription of four dollars (as required by the statute), for each subsequent year during which he was engaged in teaching. No subscriptions, either for arrears or otherwise, can be received from those who have ceased to teach, [and in all cases the annual payment, unless made within the year for which it is due, will be made at the rate of five dollars.]

(3.) No teacher shall be eligible to receive a pension from this fund, who shall not have become disabled for further service while teaching a public school, or who shall not have been worn out in the work of a public school teacher.

(4.) All applications must be accompanied with the requisite certificates and proofs, according to the prescribed form and instructions. No certificate in favour of an applicant should be signed by any teacher already admitted as a pensioner on the funds.

(5.) In case the fund shall at any time not be sufficient to pay the several claimants the highest sum permitted by law, the income shall be equitably divided among them, according to their respective periods of service.

(6.) Communications and subscriptions in connection with this fund, are to be sent to the Chief Superintendent of Education.



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